SUBMISSION

of the

PUBLIC SERVICE ALLIANCE OF CANADA

IN THE MATTER OF THE FEDERAL PUBLIC SECTOR LABOUR RELATIONS AND EMPLOYMENT BOARD and a dispute affecting the PUBLIC SERVICE ALLIANCE OF CANADA and HER MAJESTY IN RIGHT OF CANADA AS REPRESENTED BY THE TREASURY BOARD, in relation to the employees of the Employer in the

Border Services Group

To the Federal Public Sector Labour Relations and Employment Board
Public Interest Commission:

Chairperson
Lorne Slotnick

Representative of the interests of the Employees
Joe Herbert

Representative of the interests of the Employer
Jacques Emond

May 2021

Appearances

Morgan Gay, Negotiator
Darren Pacione, Research Officer

PSAC Bargaining Team Members:

Michael Aessie
Mathew Ashworth
Frances Baroutoglou
Claude Bouchard
Joey Dunphy
Leanne Hughes
Charles Khoury
Jonathan Ross
Ken Turner

TABLE OF CONTENTS

INTRODUCTION

The Bargaining Unit

The Border Services (FB) bargaining unit comprises 8,523 employees. The bargaining certificate was issued by the Public Service Staff Relations Board on February 21st, 2007.

When the FB bargaining unit was created in February 2007[1], the primary criterion applied by the Federal Public Sector Labour Relations and Employment Board in determining inclusion in the bargaining unit was administration and enforcement of the law in the context of both the Customs Act and Excise Act. All employees covered by the FB bargaining certificate work for Canada Border Services Agency (CBSA). The vast majority are peace officers as defined in the Criminal Code of Canada.[2]

To Quote the Canada Gazette, the FB bargaining unit:

includes positions that have, as their primary purpose, responsibility for one or more of the following activities:

1. determining the admissibility of people or goods entering Canada;
2. post-entry verification of people or goods that have entered Canada;
3. arresting, detaining or removing those people who may be in violation of Canada's laws;
4. investigating the illegal entry of people or goods;
5. conducting intelligence activities related to the monitoring, inspection or control of people or goods entering Canada;
6. developing Canada Border Services Agency operational directives to be followed in carrying out the above activities; and
7. the leadership of any of the above activities.[3]

---

[1] Treasury Board (Canada Border Services Agency) v. Public Service Alliance of Canada, 2007, PSLRB 22 (Exhibit 1)
[2] Criminal Code R.S.C., 1985 c. C-46 s.2. Online: https://laws-lois.justice.gc.ca/eng/acts/c-46/page-1.html#h-115011 (Exhibit 2)
[3] Government Notice (Treasury Board Occupational Group Definition) C. Gaz. 2006. I. 512. (Border Services Group Definition) Online: https://gazette.gc.ca/rp-pr/p1/2006/2006-03-11/pdf/g1-14010.pdf (Exhibit 3).

CBSA is a law enforcement agency, and union members in the FB bargaining unit work in law enforcement. For example, based on data from the CBSA's 2019 to 2020 Departmental Results Report, workers at CBSA:

- Effected 19,719 firearm and prohibited weapon seizures
- Effected 29,247 drug seizures with a total value of $519.3 million, through efforts such as the operationalization of designated safe examination areas and the continued deployment of detector dogs at postal facilities, and play a central role in combatting the opioid crisis
- Enforced the removal of 11,313 inadmissible persons, which represents an increase of nearly 17% compared to last fiscal year
- Collected $32 billion in taxes and duties[4]

The CBSA is the second largest armed law enforcement organization in Canada - only the RCMP is larger.[5] Employees in the FB bargaining unit carry out a vast range of duties associated with the administration and enforcement of the law, including: surveillance; intelligence work; the apprehension of individuals who have entered Canada illegally; the performing of escorted removals of detainees out of Canada and back to their countries of origin; ensuring commercial trade compliance; the conducting of investigations work and intelligence analysis; the development of policy recommendations in the context of the enforcement and administration of customs, excise and immigration law; performing targeting duties that include the verification of ship and flight manifests in an effort to apprehend individuals that have been identified with criminal and/or terrorist activity; representation with respect to legal proceedings concerning detention reviews, appeals and dispute resolution sessions before the Immigration and Refugee Board; collaboration with other law enforcement, intelligence and security agencies in joint operations. (Exhibit 4)

Border Services Officers (BSO's) represent a majority of the workers in the bargaining unit. These employees work at airports, land border and marine ports of entry, and at

[4] CBSA Departmental Results Report, p.4-6: https://www.cbsa-asfc.gc.ca/agency-agence/reports-rapports/dpr-rmr/2019-2020/report-rapport-eng.html (Exhibit 5)
[5] Ministerial transition 2019: Minister's book – Overview: https://www.cbsa-asfc.gc.ca/pd-dp/tb-ct/min/overview-apercu-eng.html (Exhibit 6)

CBSA's postal operations. BSO's enforce over 90 acts, regulations and international agreements on behalf of federal departments, agencies, the provinces and territories. BSO's have the power to seize and arrest and are required to undergo regular Control and Defence Tactics (CDT) training as a condition of employment. In 2006 the Government of Canada announced that BSO's working in land border and marine environments would be equipped with firearms. This arming initiative has also come to include Inland Enforcement Officers, Intelligence Officers and Investigators, all three groups also being required to undergo regular CDT training. As of 2007, no other population of enforcement personnel in Canada enforces as many laws as do FB employees at CBSA.[6]

As is the case with any population working in a law enforcement capacity, the work performed by a significant majority of employees in the bargaining unit requires exposure to danger and, of course, for over a year now, working on the frontline of the COVID-19 pandemic. With respect to the impact the pandemic has had on the frontline CBSA officers' working conditions, Public Safety and Emergency Preparedness Minister Bill Blair recently stated on March 10, 2021 at the Public Safety Committee that:

> "CBSA officers who have been answering the call throughout this entire epidemic have done an extraordinary job, in my opinion. We did close down a number of remote and smaller points of entry so that we could concentrate our resources. The change we made on international travel, for example, to concentrate it into four international airports—Montreal, Toronto, Calgary and Vancouver—was an acknowledgement of the extraordinary amount of work.
>
> I will also tell you that these measures have had an impact on their workload. It has affected the time it takes to process travelers and goods arriving at our border because of the additional measures we have put in place. We've had a number of orders in council that have placed additional requirements on our border service officers. They are all trained and designated, for example, as screening officers under the Quarantine Act. They perform the very important role of protecting Canadians from people coming back into the country to ensure that they're not ill and that they have an appropriate plan. They have the

[6] Northgate Group Corp, *A View From the Frontlines Officer Safety and The Necessity of Sidearms,* January 2006, p. 17. Available online: https://www.ciu-sdi.ca/wp-content/uploads/2011/02/Northgate.pdf (Exhibit 7 - Referred to as Northgate hereafter)

> important role of referring individuals who are going into quarantine to the Public Health Agency."[7]

Yet despite the vital role played by FB bargaining unit employees in ensuring that Canada's laws are observed and its borders secure, and as frontline employees that have processed and interacted with hundreds of thousands of individuals at airports and land borders throughout the COVID pandemic, the terms and conditions of employment of employees in the FB bargaining unit are inferior compared to those of other enforcement personnel both within the federal public service and among the broader law enforcement community.

Some of this can be attributed to the fact that many of the duties performed by members of the bargaining unit were introduced as recently as 14 years ago or even sooner, such as CDT and the introduction of firearms. The fact that these workers were part of a much larger bargaining unit (Program and Administrative Services) prior to 2007, a bargaining unit wherein current FB employees represented a small fraction of the represented employees, could also be argued as being at least partially responsible for the lack of parity with other workers in the broader enforcement community.

However, it is imperative the Commission understand that the CBSA is an armed law enforcement organization. While the Union will amplify CBSA's role as law enforcement organization and partner among other comparable organizations, it is also key that the Commission view how the CBSA continues to explain itself in no simpler terms. For example, in archived corporate documents on audits and evaluation reports, an Audit of Leave published by the CBSA in April 2014, reported in no vague terms that:

> "The CBSA context is different from most public organizations: it is a geographically dispersed, *armed law enforcement organization* operating 24 hours a day, seven days a week. Two thirds of the operating budget is dedicated to salaries with a requirement to replace the vast majority of front line staff

[7] Minister of Public Safety and Emergency Preparedness Bill Blair on Mar. 10, 2021 at the Public Safety Committee: https://openparliament.ca/committees/public-safety/43-2/19/bill-blair-16/ (Exhibit 8)

absences. It is therefore imperative that leave be managed diligently to minimize replacement costs."[8]

Again, in then CBSA Vice-President Martin Bolduc's testimony before the Standing Senate Committee on National Security and Defence in 2016, he refers to the CBSA as an "*armed law enforcement organization*" responsible for "*ensuring Canada's security*", and a "*valued partner of the RCMP and other law enforcement organizations*."[9]

More recently, the Internal Audit and Program Evaluation Directorate's September 2017 Evaluation of the CBSA Arming Initiative report (modified last in Feb 2019) pointed to this key finding: "*With the transition to steady-state completed in March 2017, documents and feedback from interviewees have identified potential opportunities for improvement to the Defensive Tactics Program and to the Agency as an armed law enforcement organization*."[10]

The Union submits that there can be no doubt whatsoever that employees in the FB bargaining unit today perform duties that correspond entirely with those performed by workers employed by other Canadian law enforcement agencies. The Union also submits that it is in the interests of all parties – the employer, the Union's members, the federal government and indeed all Canadians – for workers in the FB bargaining unit to be afforded the same working conditions as other Canadian enforcement workers. It is the Employer's failure to recognize and embrace this concept, coupled with the Employer's intransigence and refusal to negotiate solutions to on-going workplace problems, that led the Union to declare impasse and file for conciliation in December 2020.

[8] CBSA, Audit of Leave: https://www.cbsa-asfc.gc.ca/agency-agence/reports-rapports/ae-ve/2014/al-ac-eng.html?pedisable=true (Exhibit 9)
[9] Standing Committee on National Security and Defence, March 21, 2016, p. 2: https://sencanada.ca/en/Content/Sen/committee/421/secd/52441-e (Exhibit 10)
[10] Evaluation of the CBSA Arming Initiative. https://www.cbsa-asfc.gc.ca/agency-agence/reports-rapports/ae-ve/2017/arm-arme-eng.html (Exhibit 11)

Negotiations History

Notice to Bargain was served under section 105 of the Federal Public Service Labour relations Act on March 31st, 2018. The parties met in fourteen sessions for a total of 37 days of negotiations meetings.

The Union declared impasse when the Employer demonstrated little willingness to either address on-going problems in CBSA workplaces, or to agree to same terms and conditions of employment that are standard for other Canadian enforcement workers, including those employed elsewhere in the federal public service.

This is only the 4th round of negotiations for this group. The Union's goal in this round has been to negotiate fair and reasonable improvements to working conditions in an effort to address on-going problems in the workplace, and to bring terms and conditions of employment for employees in the FB bargaining unit in line with those of workers engaged in similar employment elsewhere in the Canadian labour market. The Union will demonstrate that most of the changes being proposed are commonplace in the broader law enforcement community. These proposed changes address a well-founded belief within the FB group that bargaining unit working conditions in certain critical areas are well below standards that exist for other unionized workers doing similar work elsewhere in Canada.

In many cases, the solutions offered by the Union reflect what the federal government has already agreed to for other bargaining units found within the Ministry of Public Safety. This double-standard has been a source of considerable frustration among PSAC members at CBSA, namely that the Treasury Board has refused to agree to many of the solutions proposed by the Union that it has agreed to for other groups. In other cases, the solutions offered by the Union reflect terms and conditions of employment that can be found elsewhere within the Canadian public sector.

The main objectives of the Union in this round of negotiations are three-fold:

- First, the Union seeks to address the gap in terms and conditions of employment that exists between the FB group and the broader law enforcement community in Canada.
- Second, improve protections for FB members in the context CBSA's heavy-handed managerial culture.
- Third, to fix problems that plague CBSA workplaces.

Labour relations are extremely poor between the parties.

Since January of 2013 there have been over thirty work refusals at CBSA work locations.

There is a virtual mosaic of litigation filed by the PSAC at present against CBSA and Treasury Board concerning the FB bargaining unit, including an appeal before the Occupational Health and Safety Tribunal Canada, health and safety litigation before the federal courts, two complaints filed with the Workplace Safety and Insurance Appeals Tribunal, a Section 133 complaint filed with the PSLRB, two on-going human rights complaints filed with the Canadian Human Rights Commission, a freeze-violation complaint (Section 107) filed with the PSLRB and a case going before the Supreme Court of Canada.

There are well over 7,000 grievances filed against the Employer by employees or their Union, with 3,000 at the fourth level.

Respect and fear of reprisal to form dominant themes in ongoing workplace audits and surveys. For example, a Fall 2019 Report of the Auditor General of Canada on Respect in the Workplace, which the Union will also elaborate on in rationale relative to its abuse of authority proposal, is also important to flag this critical issue here in the introduction. Recently, and in the context of committee debate about abuse of authority in the context

of a different employer, CBSA President, John Ossowski was asked: “To what extent are you providing the leadership required to ensure that in future, the Office of the Auditor General would be able to cite you as a model to be followed in terms of managing the working environment for your employees?”

President Ossowski responded:

> “I want to reassure you that all the management cadre in the organization is committed to this. We hold our managers to a higher standard than employees. We're providing the support and training. We're actively monitoring this. As I mentioned, we're going to be doing an audit on ourselves on this matter in the coming year.
>
> We're also looking at other mechanisms. We've got a heat map process, where we're looking to see where the hot spots are so we can dive in quickly. We're looking at using a third-party firm, using artificial intelligence with the Department of Justice to understand where there might be some of those areas that we need to dive into quickly.
>
> This is a full-court press, as far as I'm concerned. We are showing leadership.”[11]

And while the testimony of the President at this Public Accounts Committee must be read in totality (linked in footnote 10), the Union argues that if these are the positions of the President of the organization then it is imperative that this is reflected at the bargaining table and the collective agreement.

It is further notable that the last comprehensive Public Service Employee Survey conducted in 2019 by Treasury Board painted a bleak picture indeed for the FB group. Many respondents in front-line positions who participated in the survey indicated that:

- they do not have confidence in CBSA senior management (49% recorded a negative answer)

[11] President of CBSA, John Ossowski on January 28, 2021 at the Public Accounts Committee: https://openparliament.ca/committees/public-accounts/43-2/15/john-ossowski-19/ (Exhibit 12, p. 54)

- employees do not receive meaningful recognition for work well done (only 45% recorded a positive answer)
- there are limited opportunities to provide input into decisions that affect their work (only 49% recorded a positive answer)
- they do not feel they get training needed to do their jobs (only 48% recorded a positive answer, less than 2018)
- that CBSA does not do a good job of supporting career development (52% recorded a negative answer)
- employees cannot raise concerns without fear of reprisal (this is cross-referenced in multiple places because 48% of respondents answered they could not initiate a formal recourse process without fear of reprisal).
- that there no opportunities for promotion within the agency (only 32% recorded a positive response with 51% recording a negative response)
- are unsatisfied with the agency. (Exhibit 13)

A comparable survey was also conducted in by the Office of the Auditor General of Canada between 6 June and 5 July 2018. In the OAG's Fall 2019 report--Respect in the Workplace—detailed results, which are also cross-referenced in the Abuse of Authority and Whistleblowing sections, show that at CBSA more than one third (35%) of surveyed respondents (n = 6090) agreed that:

> "If an employee in my workplace was affected by harassment, discrimination, or violence from another employee or management, the employee would fear reprisal as a result of making a complaint."[12]

Further, at CBSA, more than one half (55%) of surveyed respondents (n = 6090) agreed that "civility and respect are serious of significant concerns" and, at CBSA, that about two thirds (66%) of surveyed respondents (n = 6090) agreed that organizational culture is a serious or significant concern.

[12] OAG's Fall 2019 report--Respect in the Workplace.
https://www.oag-bvg.gc.ca/internet/English/parl_oag_201911_01_e_43530.html#hd2a (Exhibit 14)

In the OAG report, CBSA agreed with, indicated an accounting for the implementation of Bill C-65, and pointed to actions taken as of Fall 2019 relative to the three recommendations of the OAG:

- CBSA should develop and implement comprehensive strategies to address harassment, discrimination, and workplace violence. Each strategy should be based on risks and be supported by action plans with clear accountabilities and performance monitoring for continual improvement;
- CBSA should complete and document the results of their analyses to support decisions when handling harassment, discrimination, and workplace violence complaints; and
- CBSA should always inform employees of informal processes available for resolving complaints of harassment and workplace violence.
- of those who experienced harassment, 67% said it came from someone in a position of authority
- that their workplace is not psychologically healthy

In addition, CBSA's Internal Audit and Program Evaluation Directorate recently published its September 2020 Follow-up Audit of Professional Standards. Among the key findings CBSA agreed with concerned the necessity to address "gaps in the design of the CBSA investigation process" and "limited quality control (supervisory review and approval)" relative to management led investigations.[13] The rationale of the Union's discipline proposal further cross-references and addresses the findings of the audit.

Thus, clearly there is widespread unhappiness amongst PSAC membership at CBSA, particularly amongst front-line personnel – a demographic that represents a significant majority of employees in the bargaining unit. This is the broader context within which this round of negotiations has taken place.

[13] CBSA. Internal Audit and Program Evaluation Directorate. Follow-up Audit of Professional Standards. September 2020 (last modified Mar 22, 2021): https://www.cbsa-asfc.gc.ca/agency-agence/reports-rapports/ae-ve/2020/ps-np-eng.html (Exhibit 15)

Finally, there are also clearly recruitment and retention problems at CBSA. This is made very clear in the CBSA's 5-Year Human Resources Plan (2018-2023). The Employer explains that after intake 10 (15 Dec. 2017) was allocated, the CBSA, nationally, was short 637 BSOs. As the plan states:

> The Officer Induction Model (OIM) has been successful at graduating close to the target number of 288 recruits each year, this target was based on the available funding at the time of the OIM's inception in 2012. The target number has been revised to 360 in fiscal year 2018/2019 to consider changes in attrition, promotion, and officers on duty to accommodate or leave without pay, **but it still does not meet the operational needs** (Exhibit 16).

Table 1 below highlights the percentage of members by age-band and are sourced from demographic data provided by the Employer as of March 31st, 2018. According the Employer's data, and in addition to the BSO shortage, a cohort of approximately 20% (that this was 3-years ago) are currently above 50 years of age. According to Statistics Canada, in 2018, the average retirement age of a public sector employee was 61 years.[14]

Table 1: Members by age

Age Group	Male	Female	Total	% of Total
30 or less	633	288	921	11%
31-40	1896	1369	3265	38%
41-50	1458	1116	2574	30%
51-60	838	720	1558	18%
61+	118	87	205	2%
Total	4943	3580	8523	100%
Average Age	41.78	43.05	42.31	

With respect to ongoing vacancy, recruitment, and retention issues, the plan notes that coupled with departure and separation rates, and to account for this staffing deficit, the labour market for BSOs and the broader law enforcement community is increasingly competitive.

The Employer's refusal to address the long-standing workplace issues raised by the Union in negotiations, coupled with its decision to reject the employees' call for parity with other Canadian enforcement workers, has led the PSAC to declare impasse and submit the parties' dispute to this Public Interest Commission.

[14] Retirement age by class of worker, annual, Table: 14-10-0060-01, Statistics Canada, https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1410006001

OUTSTANDING ISSUES

NEW
PAID MEAL PERIOD

PSAC PROPOSAL

Paid Meal Period

Introduce a forty (40) hour work week with a thirty (30) minute paid meal break for every eight (8) hours.

RATIONALE

The Union is proposing in this round of negotiations that employees continue to work a 37.5-hour work week, but that employees be paid for a 40-hour work week. In effect, employees would receive a paid meal period of .5 hours per day.

A paid meal period is the standard for law enforcement agencies in Canada. Every major law enforcement agency in Canada has agreed to a paid meal period for its employees. Within the federal public service, employees of both the RCMP and Correctional Service Canada are provided a paid half-hour meal period. Both the RCMP and Corrections Canada fall under the same department and same ministry as CBSA.

The following represents a sample of what is contained in collective agreements to which major Canadian law enforcement agencies are a party, or in the case of the RCMP, employer policy:

Organizations	Paid Meal Period
RCMP	30-minute paid meal period
Correctional Services	30-minute paid meal period
Royal NFLD Constabulary	60-minute paid meal period/90 minutes for 12hr shift
Saint John, NB	90-minutes on 12hr shift
Ottawa Metro	60-minutes paid meal period
Ontario Provincial Police	45-minute paid meal period
Sûreté du Québec	60-minute paid meal period

City of Edmonton	30-minute paid meal period
Halifax Metro	60-minute paid meal period
City of Montréal	30-minute paid meal period
Metro Toronto	60-minute paid meal period
Peel Region	60-minute paid meal period
Calgary Metro	30-minute paid meal period
Saskatoon	45-minute paid meal period for 12hr shift, 40-minute paid meal period for 10hr shift.
Vancouver Metro	60-minute paid meal period
City of Winnipeg	30-minute paid meal period
Charlottetown Police	45-minute paid meal for 10 to 12hr shift, 30 minutes on 8hr

(Exhibit 17)

Section 175 of the Public Service Labour Relations Act speaks of:

> (*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;*

A paid meal period is an example of a term and condition of employment that is universal in Canadian law enforcement. The Union submits that if compensation and terms of conditions of employment for FB workers are to be comparable to employees in similar occupations in Canada, a paid meal period is critical. The Act also speaks of:

> *(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.*

Again, as indicated earlier, workers at both the RCMP and Correctional Service of Canada are afforded a paid meal period. Employees at CBSA are the only employees within the federal public service that work for a major law enforcement agency that do not have access to a paid meal period. In light of these facts, the Union submits that its proposal is not only in the interests of fairness for employees in the bargaining unit, it is also entirely consistent with what is called for under the Act.

There is a double-standard in terms of working conditions for federal government employees responsible for law enforcement, in the sense that the employer has agreed to both a paid meal period and clear scheduling parameters for workers at Corrections Canada, yet it has refused to date to agree to the same for workers at CBSA. The Union's proposals represent a proverbial "win-win" for the parties. And with respect to the Union's proposal for a paid meal period, such a provision would ensure that terms and conditions of employment are comparable with employees employed in similar occupations within the broader Canadian labour market. A paid meal period is literally ubiquitous in Canada for officers employed in law enforcement. It would indeed be trite to say that the FB group is an outlier in this regard.

Furthermore, in addition to the broader law enforcement community, the Union would also point out that union members at Canada Post also access a paid meal period. There are hundreds of Border Services officers working exclusively at CBSA's postal operations across Canada. In all of these cases these employees work in buildings adjacent to or, in some cases such as at the Mississauga plant, in the *same building* as unionized postal workers. The Union submits that if Canada Post can agree to provide over 40,000 of its employees a paid meal period, then surely CBSA can do the same for law enforcement personnel working in postal facilities.

Lastly, the Union made a similar proposal in the previous round of negotiations and in that round the Public Interest Commission included a reference to a paid meal period in its recommendation. (Exhibit 18, PSLRB 590-02-10 and Exhibit 18A, 590-02-21) The Union submits that the landscape has not changed. While a number of issues were resolved in the previous round of negotiations, this matter remains outstanding.

In light of this and the other arguments put forward in this brief, the Union respectfully requests that its proposals for a paid meal period be incorporated into the Commission's recommendation.

NEW
EARLY RETIREMENT FOR FB WORKERS

Amend the pension plan to allow for employees in the FB bargaining unit to retire with 25 years of service without penalty.

RATIONALE

Since the creation of a distinct occupational group definition and bargaining unit for the FBs in 2006, PSAC has waged a sustained campaign to improve pension arrangements for its members in the FB bargaining unit. The union is seeking an early retirement regime consistent with other federal law enforcement officers. This means the ability to retire after the completion of 25 years of pensionable service with no reduction to benefit entitlement; commonly referred to as “25 and out”. There are several reasons for this.

First, like other workers responsible for enforcing and administering the law, employees in the FB bargaining unit face risks that go far beyond what most workers normally encounter in their jobs. Second, given the nature of the work performed by employees in the FB bargaining unit and the crucial importance of that work in terms of ensuring the safety and security of Canadians, it is in the interest of both CBSA and the broader Canadian public that employees in this occupational group have access to early retirement regime in order to avoid risks to public health and safety. Third, a retirement scheme like the one being proposed by PSAC for employees in the FB bargaining unit is standard in the broader law enforcement community. Finally, the costs of providing enhanced early retirement benefits for members of the FB group are relatively limited.

Therefore, the Union submits that members who make the choice to retire early, after 25 years of valuable service, should not be penalized with a significant reduction to their pension entitlement.

Distinct pension reality for enforcement workers under the Department of Public Safety

The Royal Canadian Mounted Police (RCMP), Correctional Service Canada (CSC) and CBSA all fall under the umbrella of Public Safety Canada. Yet the early retirement benefits for members of the FB group differ significantly from those of the other 2 groups. Correctional Officers under the Public Service Superannuation Act (PSSA) are part of the "Operational Services Group" while RCMP regular members fall under completely separate pension legislation, the Royal Canadian Mounted Police Superannuation Act. As Table 2 below demonstrates, workers at both the RCMP and CSC can retire after 25 years of pensionable service with no actuarial reduction to their benefit entitlement.

This situation has worsened as the age of retirement for new employees who became plan members on or after January 1, 2013 increased from 60 to 65. All other age-related benefit thresholds were also increased by five years. Thus, the difference between the regular PSSA group and the Operational Service group has grown even larger. With these changes, an employee would now have to work longer for the same pension. With the retirement age bumped five years to age 65, 'early retirement' will now be age 60 if the member has worked at least 30 years. In short, any employee who become a plan member on or after 2013 and retires before they turn 65 will face a pension penalty if they don't have at least 30 years of service.

Table 2: Early retirement provisions – Public Safety Canada

Plan & Group	Unreduced retirement	Early Retirement
PSSA (Group 1) Public Service Main Group (Including FB members)	Age 60; or Age 55 with at least 30 years of service.	Age 50 Reduction is 5% per year before unreduced retirement.
PSSA (Group 2) Public Service Main Group (Including FB members)	Age 65; or Age 60 with at least 30 years of service.	Age 55 Reduction is 5% per year before unreduced retirement.
PSSA	Age 60; or	Reduced 5% per year

Operational Service Group (Including Correctional Officers)	25 years of service.	before unreduced retirement.
RCMP Superannuation act Regular Members	Age 60; or 25 years of service.	Reduced 5% per year before unreduced retirement.

The following tables illustrate 2 different age and service scenarios under both the PSSA Regular and Operational Service Group provisions, assuming that an employee is in Group 1 of the PSSA. It clearly illustrates the benefit of a '25 and out' retirement scheme. It also shows that not all employees who have access to an early retirement scheme will necessarily retire early as a strong incentive to work longer remains. As a result, in many instances there would be no extra cost incurred by the Employer with the introduction of early retirement scheme.

The following tables describe pension entitlement scenarios at the 25-years and 30-years of service marks highlighting the current impact of the reduction for not meeting the years of service rule and the Union's proposal of an unreduced pension entitlement at 25 years of service. In Table 3, under scenario one (I), the employee would be unlikely to retire because the 37.5% (as % of final pay) would likely be insufficient to meet retirement income objective. Under scenario two—the Union's proposal--however, the pension at a retirement age of 55 is significantly higher under the PSO rule than under the regular PSSA rules (50% vs. 37.5%) but an employee may not retire because the pension is still insufficient.

Table 3: Attained Age 55 and 30 years of service

Scenario	**I**	**II**
Group	**Regular Group (Including FB)**	**Operational Service Group (Union proposal)**
Attained Age	55	55
Service	25	25
Reduction	25%	0%
Pension entitlement	**37.5%** =25*2%*(1-25%)	**50%** =25*2%

*The table makes the simplifying assumption that the benefit under the pension plan is determined as 2% of average earning for each year of service. This is approximately true when looking at combined income under the PSSA and the CPP.

In Table 4, under scenario one (I), an employee may very well retire, as the 60% pension could be sufficient to meet a retirement income objective. Under scenario two (II), an employee may retire, but the retirement age, and pension, would be the same as under the regular PSSA rules. There would be no cost to providing the enhance PSO rules over the regular PSSA rules.

Table 4: Attained Age 60 and 30 years of service

Scenario	**I**	**II**
Group	**Regular Group (Including FB)**	**Operational Service Group (Union proposal)**
Attained Age	60	60
Service	30	30
Reduction	0%	0%
Pension entitlement	**60%**	**60%**

*The table makes the simplifying assumption that the benefit under the pension plan is determined as 2% of average earning for each year of service. This is approximately true when looking at combined income under the PSSA and the CPP.

<u>Dangerous work with demanding physical training regimes</u>

As previously stated, the Union submits that there can be no doubt that employees in the FB bargaining unit today perform duties that are analogous with those performed by workers employed by other Canadian law enforcement agencies.

Employees in the FB bargaining unit carry out a whole range of duties associated with administration and enforcement of the law, from surveillance to intelligence work to escorted removals to joint operations with other agencies to seizures to arrests.

While the nature of the work and the workplace for these employees have always been somewhat different from most other federal employees, the responsibilities, and duties of employees in the FB group have evolved significantly since the beginning of the new millennium.

- In 2000 with the implementation of “Officer Powers” (Exhibit 2), FBs were provided with the authority to enforce other Acts of parliament, including the Criminal Code of Canada. This expanded scope of responsibility was accompanied with new requirements for Use of Force Training (currently referred to as Control and Defensive Tactics), more stringent occupational fitness standards and a requirement for "Skills Maintenance" every three years.

- In 2003, the CBSA was created as a stand-alone entity mirroring the enhanced focus on border security and law enforcement in the United States and several Commonwealth countries. This transition provided CBSA with a more defined law enforcement mandate and placed the operations of CBSA within Public Safety and Emergency Preparedness Canada, along with the Royal Canadian Mounted Police and the Correctional Service of Canada (Exhibit 19).

- In 2007, CBSA commenced implementation of the "Arming Initiative" which, in conjunction with the "Doubling-Up Initiative", acknowledged the dangers inherent in the performance of FB’s duties. These initiatives were also undertaken in recognition of the law enforcement functions of FB’s. Firearm certification and regular recertification are now occupational requirements of the position of a Border Services Officer.

- Employees in the FB bargaining unit enforce over 90 acts, regulations and international agreements on behalf of federal departments, agencies, the provinces and territories, many provincial laws, as well as international agreements and conventions. In fact, no other population of enforcement personnel in Canada enforces as many laws as do FB employees at CBSA (Exhibit 7).

- The federal government and the Public Service Labour Relation Board (PSLRB) have already acknowledged that this evolution in enforcement duties over time by creating a distinct occupational group definition (Exhibit 3) and bargaining unit (Exhibit 20) for FB’s. In creating the occupational group and the FB bargaining unit both the Canadian Government and the Board have clearly delineated and recognized the enforcement nature of the work performed by bargaining unit employees.

As is the case with any population working in an enforcement capacity, the work performed by a significant majority of employees in the bargaining unit requires regular exposure to danger, stress and injury. Employees in the FB bargaining unit are also faced with the physically taxing challenges of Control and Defensive Tactics Skills Maintenance every three years, and annual firearm recertification.

This reality of constant physical and psychological threat wears the body and mind prematurely, and in turn, makes the job more difficult to perform over time.

A shortened career path is the interest of CBSA

As a result of these changes in the nature of the work, there have been an increased number of requests for accommodation, and it is likely that those cases will continue to increase over time. A shortened career path could avoid costly and wasteful legal proceedings and recurring union-management wrangling at the local, regional and national levels.

It should also be noted that employees in the FB bargaining unit are acutely aware of the fact that they are the only enforcement employees working under the Ministry of Public Safety and Emergency Preparedness Canada that do not have access to a "25 and out" plan, and that plans that are indeed superior to the plan currently in effect for workers at the RCMP and Corrections Canada are the norm elsewhere in the broader law enforcement community. This in turn can and does have a negative impact on employee morale.

Moreover, the PSAC continues to advocate for reform most recently writing on October 26, 2020 to the President of the Treasury Board, Minister Jean-Yves Duclos, with information related to an equitable retirement regime for the FB bargaining unit (Exhibit 21).

The Union therefore submits that it is in the interest of CBSA for the early retirement regime that is already in effect for other federal enforcement workers be applied to employees in the FB bargaining unit.

Acting in the public interest

A shortened career path for employees in the FB bargaining unit is not only in the interest of the CBSA, but it is also in the interest of the federal government and the

Canadian public. The premise behind the establishment of the "Public Safety Occupation" category or the specific provisions for the operational services groups under the PSSA has always been the maintenance of public safety.

These special rules are intended to assist employers who, out of concern for public safety, wish to encourage or require employees in these occupations to retire earlier than employees in other occupations. Given the nature of the work performed by employees in the FB bargaining unit and its crucial importance in terms of ensuring Canadian safety and security, it is in the public interest for employees in this occupational group to have access to the same retirement regime as other public safety workers in order to avoid risks to public health and safety. It is well established that advancement in age bears some correlation to deteriorating health (particularly the ability to meet the physical demands of the job in public safety occupations), and therefore an increased risk to the public.

The current retirement system has the net effect of encouraging employees to stay on and work longer than would be the case with employees performing similar duties with other enforcement agencies. Doing so may increase the risk to employee health and may have a detrimental effect on public safety given the physical and mental demands of the job.

Not breaking new ground

By changing the pension arrangements for Correctional Officers, Treasury Board and CSC have already proven that the PSSA pension arrangements could be modified, refuting TB's argument that it cannot negotiate pension improvements.

In fact, several federal public service pension plans have been tailored to meet the needs of the employees covered, including the PSSA. Those plans include the:

- Air Traffic Controller (PSSA)
- Correctional Officer (PSSA)
- Royal Canadian Mounted Police Superannuation Act

- Canadian Forces Superannuation Act
- Members of Parliament Retiring Allowances Act
- Judges Act

Within the broader “enforcement” community, an early retirement scheme like the one proposed by PSAC is the norm. Most Canadian Police Organizations, including the RCMP, provide the option of a shortened career path to their employees.

Table 5 below, summarizing the different plan features we find within the major Canadian law enforcement agencies, clearly demonstrates that pensions for members of the FB group lag other major Canadian law enforcement agencies. As background and understanding that this table is nearly ten years old, the Union has no knowledge major changes for these groups. Some of the main findings:

1) All have a Defined Benefit (DB) plan where the payout is based on the best final average years of service (BFAS).

2) Most of these group plans define the best final average years of service (BFAS) by the best 5 consecutive years. OPP, SQ and Halifax use a more generous definition based on the best 3 years.

3) Most of these group plans have a normal retirement benefit formula of 2% of BFAS with integration to CPP. Montréal and Vancouver use a more generous formula and provide 2.5% of BFAS and 2.33% of BFAS respectively. SQ and Halifax use a more generous formula since they don’t have a reduction formula for the integration with CPP.

4) Having moved to a 50%-50% contributions split, the employees of FB group now contribute at a similar or higher level than most other groups.

5) <u>All of these groups have better early retirement provisions than members of the FB group.</u>

Table 5: Summary of Plan Features – Major Canadian Law Enforcement Agencies*

Plan Feature	Border Service (FB)	RCMP Regular Member	Correctional Services (CX) Operational Service	OPP	SQ	Edmonton	Halifax	Montréal	Toronto	Vancouver
Type of Plan	DB / Best Final average	DB / Best Final average	DB / Best Final average	DB / Best Final average	DB / Best Final average	DB / Best Final average	DB / Best Final average	DB / Best Final average	DB / Best Final average	DB / Best Final average
Eligible Employees (excluding part-time ees)	All employees	All employees	All employees	All employees	All employees	All employees	All employees	All employees	All employees	All employees
Normal retierment age	Age 60 or 35 yrs of pensionable service	Age 60 or 35 yrs of pensionable service	Age 60 or 35 yrs of pensionable service	Age 65	Age 65	Age 55	Age 60	Age 65	Age 60	Age 60
Earliest age for unreduced pension	Age 60 + 2 years service or Age 55 + 30 years of service	25 years service or age 60 + 2 years service	25 years service or age 60 + 2 years service	Age 50 + 30 years of credited service or Age+ credited service = 90 years or Age 60 + 20 years of credited service	25 years service or age + service=75	25 years service or age 55 + 5 years service	Age + Service=75	30 years of service	Age 50 + 30 years service or age + service=85	Age + Service=80
Normal retirement benefit formula	2% of BFAS with integration to CPP	2% of BFAS with integration to CPP	2% of BFAS with integration to CPP	2% of BFAS with integration to CPP	2% of BFAS with no integration to CPP	2% of BFAS with integration to CPP	2% of BFAS with no integration to CPP	2.5% of BFAS Integrated including reduction formula when less than 30 yrs of service	2% of BFAS with integration to CPP	2.33% of BFAS with integration to CPP
Definition of best final average salary (BFAS)	Highest average salary for 5 consecutive years	Highest average salary for 5 consecutive years	Highest average salary for 5 consecutive years	Effective January 2012: Highest 3-yr average salary	Average of best 3 years earnings	Highest avaerage salary for 5 consecutive years	Highest avaerage salary for 3 consecutive years	Average of best consecutive 1095 days of earnings	Highest avaerage salary for 5 consecutive years	Highest avaerage salary for 5 years
Employee contributions	6.2 up to YMPE, 8.6 in excess of YMPE	5.8% up to YMPE, 8.4% in excess of YMPE	6.2 up to YMPE, 8.6 in excess of YMPE	9.2% up to YMPE, 12.3% in excess of YMPE	6.2% up to YMPE, 8% in excess of YMPE	13.45%	10.71%	6.2% up to YMPE, 8% in excess of YMPE	8.9% up to YMPE; 14.1% in excess of YMPE	9.74% up to YMPE; 11.24% in excess of YMPE
Early retirement reduction formula	5% per year prior to unreduced retirement requierments	5% for each full year of service less than 25	5% for each full year of service less than 25	5% per year prior to age 65	3% per year prior to unreduced retirement requierments	3% per year prior to unreduced retirement requierements	0.5% per month from expected unreduced retirement date assuming continued employment	Actuarial equivalence	5% per year times the lesser of:(60 minus age) or 85 factor minus current factor (age+ service) or 30 minus years of service	Age 50 with 2 years services: 3% times lesser of (55 minus age) or 80 minus (age+service)

*Data source: RCMP total compensation report December 2011. This table has been simplified from the original table contain in the report. For a more detailed analysis and comparison, see the full report at 44 to 51 (Exhibit 22).

Retirement Age

One factor to be cognizant of with such a proposal is the retirement age assumption. Allowing an employee to retire earlier does not mean that an employee will retire early. In fact, under our proposal employees can still significantly benefit from the additional service accrued after having reached the eligibility to retire early. With the Union's proposal, the pension at retirement after 25 years of service is significantly higher than under the regular PSSA (50% vs 37.5%) because of the lack of penalty, keeping in mind that an employee may choose not to retire because that employee's pension is still insufficient.

Conclusion

To conclude, employees in the FB bargaining unit work in law enforcement. All are responsible for administering and enforcing the law, and a significant majority are required to meet considerable physical standards as part of their terms and conditions of employment. In short, for a significant majority risk and danger are part of the job.

Given the nature of the work and its crucial importance in terms of ensuring Canadian safety and security, it is in the interest of CBSA, the federal government and the broader Canadian public that employees in this occupational group have access to early retirement regime in order to avoid risks to public health and safety. Within the "enforcement" community, an early retirement scheme like the one proposed by PSAC is the norm rather than the exception, and what is being proposed by the PSAC is consistent with what is already being applied to federal employees working under the same department and ministry.

In light of these facts, the Union respectfully requests that the Commission recommend that Treasury Board provide the Union with a commitment to support modifying the pension plan of employees in the FB bargaining unit so that they might be brought into line with other federal law enforcement personnel.

ARTICLE 2
INTERPRETATION AND DEFINITIONS

PSAC PROPOSAL

Amend to read:

ARTICLE 2
INTERPRETATION AND DEFINITIONS

"Service" *(service)* means:

"Service" *(service)* means:

(a) All service within the public service, whether continuous or discontinuous.

(b) Notwithstanding paragraph (a) above, an employee who was a member of one of the bargaining units listed below on the date of signing of the relevant collective agreement or an employee who became a member of those bargaining units between the date of signing of the relevant collective agreement and May 31, 1990 shall retain, for the purposes of "service" and of establishing his or her vacation entitlement pursuant to this clause, those periods of former service which had previously qualified for counting as continuous employment, until such time as his or her employment in the public service is terminated.

Bargaining Units	Dates of Signing
AS, IS, PM	May 17, 1989
CM, CR, DA, OE, ST	May 19, 1989
WP	November 24, 1989

Union proposes to replace all references to "service as defined in 34.03 a) i)" with "service" or "years of service", where applicable.

Also:

1.

~~i. For the purpose of clause 34.02 only, service within the public service, whether continuous or discontinuous, shall count toward vacation leave.~~

ii. For the purpose of clause 34.0**2**~~(a)(i)~~ only, effective on April 1, 2012, on a go-forward basis, any former service in the Canadian Forces for a

continuous period of six months or more, either as a member of the Regular Force or of the Reserve Force while on Class B or C service, shall also be included in the calculation of vacation leave credits.

RATIONALE

The language being proposed by the Union with respect to Article 2 is consistent with what is contained in the parties' current collective agreement. It is a modified version of the service accrual definition contained in Article 34.03 a). Under the parties' current agreement, the service accrual definition in Article 34 is applied not only with respect to vacation accrual, but also vacation scheduling, years of service accrual for the purposes of line selection for shift-working employees and the selection of firearm training participants. Consequently, the Union is proposing to include the definition of 'service' in the definition section of the collective agreement as years of service accrual is applied in several different sections of the parties' agreement. Ensuring there is a clear definition of a concept that is applied in more than one article in the parties' agreement is in the interest of both parties and has been a standard practice in all of the parties' previous agreements; indeed, a "Definitions" article has existed in every collective agreement signed between the parties since a bargaining relationship was first established well over forty years ago.

The matter of service recognition has also been the subject of dispute between the parties during the life of the current agreement, as the Union filed a grievance over the employer's recognition of military time for vacation scheduling. While the Union lost the grievance, the PSAC does not agree to the employer's interpretation, particularly given what the parties agreed upon at the end of the last round of bargaining (Exhibit 23)

The Union submits that it is absurd to have one definition of service recognition for vacation scheduling and another for hours of work scheduling. The Union also submits that it does not make sense to have the definition of service accrual exist exclusively in the Vacation Leave with Pay article of the parties' Agreement when years of service is also applied elsewhere. The Union's proposal would ensure there is a consistent definition with respect to the application of service in 'tie-breaker' scenarios. The Union

therefore respectfully requests that its proposal be incorporated into the Commission's recommendation.

ARTICLE 14

LEAVE WITH OR WITHOUT PAY FOR ALLIANCE BUSINESS

14.x1 Union Representatives
The Employer will grant leave with pay to employees who exercise the authority of Branch President, or National CIU Representative other than the National President, on behalf of the Alliance so that such employees may undertake the duties associated with their office.

14.x2 Provided the Employer is given a minimum of ten (10) days' notice, an employee shall be granted leave without pay for any other union business as defined by the Alliance.

With respect to the Union's proposal concerning Branch Presidents, what the Union is attempting to achieve is a return to a long-standing practice that was unilaterally revoked by the CBSA during a previous round of negotiations. This revocation was the subject of a freeze complaint filed by the PSAC in 2012. In its 2013 decision concerning this matter, the Board found that the employer's unilateral revocation of paid union leave for 5 CIU National Vice-Presidents and 11 CIU Branch Presidents was a violation of the Public Service Labour Relations Act. (Exhibit 24)

The elimination of this long-standing practice has been extremely disruptive in the workplace and to labour-management relations at CBSA. Given that similar arrangements continue to exist in other departments, the Union would submit that these changes represent yet another example of anti-union animus at CBSA.

The proposals being made for Article 14 are intended to address on-going problems, and to reinstate a long-standing practice that was unilaterally (and illegally) revoked in the past. Given that what the Union is proposing for Branch Presidents was in effect for an extremely long time – in the case of the Montreal branch over 25 years – and given the geographic and operational realities at CBSA as they relate to grievance handling, the Union submits that its proposals and entirely reasonable and asks that they be included in the panel's recommendations.

ARTICLE 17

DISCIPLINE

PSAC PROPOSAL

NEW

17.01 No disciplinary measure in the form of a notice of discipline, suspension or discharge or any other form shall be imposed on any employee without:

a) just, reasonable and sufficient cause;

and

b) without his/her receiving beforehand or at the same time a written notice showing the grounds on which a disciplinary measure is imposed.

17.01 2

~~When an employee is required to attend a meeting, the purpose of which is to conduct a disciplinary, administrative or investigative hearing concerning him or her or to render a disciplinary decision concerning him or her, the employee is entitled to have, at his or her request, a representative of the Alliance attend the meeting. Where practicable, the employee shall receive a minimum of two (2) days' notice of such a meeting.~~

In any arbitration relating to a disciplinary measure, the burden of proof shall be confined to the grounds mentioned in the notice referred to in 17.01 above.

17.02 3 When an employee is required to attend a meeting, the purpose of which is to conduct a disciplinary, administrative or investigative hearing concerning him or her or to render a disciplinary decision concerning him or her, the employee is entitled to have, at his or her request, a representative of the Alliance attend the meeting **so that said representative may participate in good faith to the discussion and contribute to the clarification of the situation.**

~~Where practicable,~~ the employee **and his/her Alliance representative** shall receive a minimum of two (2) days' notice of such a meeting.

17.03 4 The Employer shall notify the local representative of the Alliance as soon as possible that such suspension**,** ~~or~~ termination **or investigative or administrative meeting** has occurred.

17.045 The Employer agrees not to introduce as evidence in a hearing relating to disciplinary action any document from the file of an employee the content of which the employee was not aware of at the time of filing or within a reasonable period thereafter.

17.0~~5~~6 Any document or written statement related to disciplinary action which may have been placed on the personnel file of an employee shall be destroyed after ~~two (2)~~ **one (1)** year~~s~~ have elapsed since the disciplinary action was taken, provided that no further disciplinary action has been recorded during this period.

NEW

17.07 In the case of suspension and termination, the burden of proof of just cause shall rest with the Employer. Evidence shall be limited to the grounds stated in the written notice consistent with 17.01.

17.xx Surveillance

At no time may electronic monitoring systems be used as a means to evaluate the performance of employees, or to gather evidence in support of disciplinary measures unless such disciplinary measures result from the commission of a criminal act.

APPENDIX XX

MEMORANDUM OF AGREEMENT

BETWEEN THE

PUBLIC SERVICE ALLIANCE OF CANADA

AND

TREASURY BOARD

FOR THE BORDER SERVICES GROUP

1. In the event that the Employer intends to initiate the removal of an employee's tools, such employee shall have access to notice and Alliance representation consistent with 17.03 and 17.04. Such employee shall also be afforded all rights consistent with Appendix H of this Agreement.

2. The Employer shall not remove an employee's tools without reasonable cause.

3. Where there is a removal of tools, the Employer shall implement an action plan outlining the steps the employee must take without undue delay, in an effort to ensure that the employee may have tools reinstated within a reasonable amount of time.

APPENDIX H

MEMORANDUM OF AGREEMENT WITH RESPECT TO

ADMINISTRATIVE SUSPENSIONS PENDING INVESTIGATIONS

Stoppage of pay and allowances will only be invoked in extreme circumstances when it would be inappropriate to pay an employee.

Each case will be dealt with on its own merits and will be considered when the employee is:

1. in jail awaiting trial,

   or

2. clearly involved in the commission of an offence that contravenes a federal act ~~or the Code of Conduct~~, and significantly affects the proper

performance of his/her duties. If the employee's involvement is not clear during the investigation, the decision shall be deferred pending completion of the preliminary hearing or trial in order to assess the testimony under oath.

RATIONALE

Ensuring that PSAC members are afforded enhanced protections in context of CBSA managerial disciplinary practices is a critical priority for the Union in this round of negotiations. It would be difficult to overstate its importance to the Union's membership.

During the last round of negotiations some improvements were made to the parties' agreement on this issue, but major problems remain and need addressing. Management at CBSA is perceived by PSAC membership as heavy-handed and authoritarian, with employees often being threatened with investigation for frivolous and/or vexatious reasons. Indeed, since 2013, the Union has filed nearly three-hundred grievances related to reprimand, suspension, or discipline. To provide perspective, this means that over 3% of the bargaining unit has grieved a disciplinary matter since 2013. This figure of course only covers matters where the employee elected to grieve.

The Union as a result is proposing modifications to Article 17, Appendix H and is proposing a new Appendix to ensure that employees in this bargaining unit are afforded basic protections in the context of discipline at CBSA.

A serious matter of contention that has arisen during the life of this agreement is that of the administering of Professional Standards Investigations (or PSI's) by the CBSA.

The Professional Standards Investigation (PSI) process was first implemented in 2007, roughly the same time that the firearms initiative was launched at CBSA. The supposed purpose behind the PSI process is to conduct an investigation as to whether or not an employee has engaged in misconduct. The current Policy on the Report, Review and Professional Standards Investigation of Alleged or Suspected Employee Misconduct

was introduced in 2015, replacing the initial policy implemented in 2007 The stated purpose of the policy is:

> *… to provide a structured approach to the reporting, fact-finding, review and Professional Standards investigation of an allegation or suspicion of misconduct by an employee of the Canada Border Services Agency (CBSA).*
>
> *The objective of this Policy is to ensure that any allegation or suspicion of employee misconduct is promptly reported to and reviewed by local CBSA management and, when appropriate, investigated by the Professional Standards Investigations Section of the Personnel Security and Professional Standards Division of the CBSA, and that any required corrective measures are promptly taken.* (Exhibit 25)

PSIs – or the threat of being subject of a PSI – is standard in CBSA workplaces. PSIs are recognized by the employees and the Union as being effectively a disciplinary process in the sense that it is an investigation to determine if there has been wrong-doing, and as the policy clearly states in section '9. Consequence of Misconduct': "A respondent found to have committed misconduct will be subject to disciplinary measures…" (Exhibit 25) Furthermore, the CBSA policy states that its standards applies to employees whether they are on or off duty.

PSIs have been a matter of contention for two main reasons. First, because the CBSA in the past took the position that they are administrative in nature, and not necessarily disciplinary, and therefore CBSA's position is that employees subject to PSIs are not entitled to having Union representation in PSI meetings. Instead employees may have an 'observer' who has no role in such meetings other than to observe.

The first issue – that such meetings are purely 'administrative' in nature – got resolved in the previous round of negotiations as the parties agreed to ad 'administrative' meetings to the list of meetings to which an employee has the right to Union representation.

However, despite the change agreed to by the parties in the previous round, the 'observer' issue remains, in that there remain a great many workplaces where CBSA management continues to assert that PSI meetings are to be treated differently from discipline-related meetings. It is for this reason that the Union has proposed the changes it has for 17.02 and 17.03. To make clear in the parties' agreement that Union representatives are not mere 'observers', but have a role to play in such meetings.

In addition to matters related to PSIs, the Union is making a proposal to address long-standing problems with respect to investigatory suspensions.

During the last round of negotiations the parties agreed on the inclusion of Appendix H. The intent behind this language was to address the long-standing issue of unpaid investigatory suspensions at CBSA, as the employer's practice had been to place employees on investigatory suspension without pay for as long as the employer deems appropriate.

It stands to reason that an investigation is conducted in order to determine whether or not discipline is warranted. Thus, in essence the practice had led to the employer imposing economic punishment on an employee by placing said employee on investigatory suspension without pay when there is no proof to demonstrate that discipline is warranted (hence the investigation).

The Union took the position in the last round that this was patently unfair and inconsistent with fundamental principles of progressive discipline. What's more, there had been instances where employees had been placed on investigatory suspension without pay for lengthy periods of time – months in some cases – without having been found guilty of any offense. This problem had been highly prevalent at CBSA. To provide but one example, over the course of twelve months at one location alone (Trudeau Airport in Montreal) 5 separate employees had filed grievances over the financial hardship caused by the employer's placing them on investigatory suspension without pay for lengthy periods of time (Exhibit 26). To employ a term used by

Adjudicator Perrault in a decision related to this matter at CBSA, such investigatory suspensions amount to a “punitive” measure. (Exhibit 27)

Despite the Union having raised the issue repeatedly and the agreed-upon language, the issue remains unresolved as the employer uses one sentence as a loop-hole to continue its practices, as it cites reference to the ‘code of conduct’ in the language to continue to put employees on unpaid investigatory suspension. The employer takes the position that it alone interprets violations of the code of conduct, rendering in effect the protections negotiated by the Union meaningless.

To address this problem, the Union is proposing that workers in the FB bargaining unit be afforded the same protections concerning investigatory suspension as those in place for other federal law enforcement workers both within the federal public service and among the broader law enforcement community.

With respect to the public service, Appendix G of the Treasury Board collective agreement covering workers in the CX bargaining unit states that:

> *When an employee is to be removed from his regular duties due to an incident involving an offender, the employee may be assigned other duties with pay or removed from his normal work site with pay pending the outcome of the disciplinary investigation provided he fully co-operate with the conduct of the investigation by attending interviews and hearings without undue delay. A refusal to attend interviews and hearings without undue delay shall result in the interruption of remuneration as long as the investigation has not been completed.* (Exhibit 28)

Language of this nature is also present within the broader law enforcement community. For example, the collective agreement covering officers employed by the Sureté du Québec states:

> *Le membre poursuivi en discipline ou déontologie pour une faute susceptible de compromettre l'exercice des devoirs de ses fonctions peut être relevé de ses fonctions avec plein traitement ou assigné temporairement à d'autres fonctions.* (Exhibit 28)

In the case of Ontario, Section 89 of the Ontario Police Service Act states that an officer may only be suspended without pay if the officer has been convicted of an offense. (Exhibit 29) With respect to the *Police Act of British Columbia* and the *Police Act of Nova Scotia* and the *Saskatchewan Police*, a police office under investigatory suspension must receive pay and benefits for a minimum of the first 30 days. (Exhibit 29)

The modifying of the parties' collective agreement as per the Union's proposal for Appendix H would not only bring protections afforded workers in the FB bargaining unit into line with those that are standard in the broader law enforcement community, but it would finally resolve an on-going problem and source of considerable discord between the parties.

The same is true with respect to the new appendix the Union is proposing concerning the removal of tools, as again the employer is engaging in a practice that amounts to employees being punished without having been found to have committed any offense.

Under the CBSA Standard Operating Procedure for the removal of an employee's defensive tools, CBSA management must:

Ensure that firearm(s) and all other defensive equipment are removed from an officer, employee or recruit when any of the following non-administrative reasons exist:

a. Criminal charge or conviction for any offence involving violence or threat of violence;

b. Threats or actual violent behaviour towards others or threats to do harm to themselves;

c. Alcohol or substance abuse;

d. The discovery of a medical condition6 (physical condition or serious psychiatric condition or serious emotional instability), whether medicated or not which may negatively influence the ability of the individual to possess, wear, or use defensive equipment; or

e. The officer is under investigation for a matter involving the use of excessive force or assault (e.g. striking a compliant individual); or

f. In the opinion of the Agency, it is not in the best interests of the Agency that an officer continues to carry or possess an Agency firearm or defensive equipment.

What has proven particularly problematic is (f), as it states that tools can be removed effectively for whatever reason should management choose to do so. What's more, the policy also states that these removals are 'non-administrative' – thus, given that management has taken the position that such measures are neither disciplinary nor administrative, Union representation is not warranted under Article 17 of the parties' agreement. (Exhibit 30)

The net outcome of the removal of defensive tools is that an employee is removed from the workplace. In some cases, where there is no accommodation readily available, the employer has placed employees on leave without pay, often for a lengthy period of time.

The Union submits that the removal of defensive tools, particularly when leave without pay is applied, is effectively tantamount to discipline. It is a form of economic punishment. Employees in some cases are being punished (taken off work without pay) without having been found guilty of any offence.

To address is this on-going problem, the Union is proposing a simple solution: that the removal of tools be treated as no different from any other administrative, investigatory, or disciplinary process. There must be reasonable cause, that employees be afforded Union representation and a plan must be put in place to ensure that employees' tools are returned without undue delay. Given the current problems, the Union believes this language is necessary to protect its membership at CBSA.

With respect to the administering of discipline and the PSI process, the Union again is proposing language that would afford workers in the FB bargaining unit protections that are common in the law enforcement community – namely that discipline shall only be administered for just cause, that the burden of proof rests with the employer, and that

Union members may have Union representation for meeting with management such as PSI undertakings.

Concerning the Union's proposals with respect to just cause and burden of proof, given the on-going problems regarding the administering of discipline in CBSA workplaces, the Union is simply looking to ensure that basic fundamentals of due process be included in the collective agreement. The principle of just cause in the case of discipline is entrenched in the labour-relations world to such an extent that the statutory requirement can be found in the Canada Labour Code, as well as a number of provincial statutes, including British Columbia, Manitoba and Nova Scotia. It is a fundamental principle upon which a great deal arbitral jurisprudence is founded in Canada within the unionized context.

As for burden on proof, to quote Mitchnick and Etherington's *Labour Arbitration in Canada* (2006), "…it is universally accepted that the employer bears the burden of proving just cause for discipline on a balance of probabilities", and that "(t)hese basic principles concerning burden of proof are set out in the oft-cited decision of *Canadian Broadcasting Corp, and Ass'n of Radio & Television Employees* (1968), 19 L.A.C. 295 (Christie)."

In past negotiations the employer has pointed out that such principles are well established in jurisprudence and therefore it is unnecessary to add them to the collective agreement. The Union submits that, given the on-going problems in CBSA workplaces across the country with respect to discipline, it is important that the protections afforded employees be enshrined in the collective agreement, so that all managers and employees can be aware of their rights.

Lastly, with respect to surveillance, a significant majority of employees in the FB bargaining unit work in an environment where surveillance cameras and other forms of equipment are common. This includes Border Services Officers who work in postal operations, in most cases in the same buildings as Canada Post workers.

Consequently, the Union is proposing that protections contained in the Canada Post collective agreement covering workers in Canada Post postal plants be included in the partys' collective agreement for the FB group. (Exhibit 31)

Summary

The problems associated with discipline at CBSA are well documented. The Public Service Employee Survey conducted in 2019 clearly demonstrates that there are employee concerns with management's heavy-handedness. Fear of reprisal remains a problematically dominant theme for the FB group. When asked, in 2019, if a member feels they can initiate a formal recourse process without fear of reprisal the negative answer rate remains alarming (48%). Similarly, the harassment in the form of unfair treatment responses indicate 61% answering yes (Exhibit 13). The Union also submits that the sheer number of grievances filed by union members in the context of discipline demonstrate that there is a problem.

What the Union is proposing with respect to Article 17, Appendix H and the new proposed appendix is straight forward – that those basic protections that are commonplace in the law enforcement community be introduced into the parties' agreement for the FB group. Active Union representation in meetings with management. Paid investigatory suspension, without loopholes. Discipline only for just cause. Not only are these commonplaces, but they have in fact in most cases already been agreed to by the Treasury Board for other workers in its employ.

In light of these facts, and in light of the mandate set out for the panel under legislation, the Union respectfully requests that its proposal be incorporated into the Commission's recommendation.

ARTICLE 18
GRIEVANCE PROCEDURE

PSAC PROPOSAL

ARTICLE 18

GRIEVANCE PROCEDURE

18.11 There shall be no more than a maximum of four (4) levels in the grievance procedure. These levels shall be as follows:

a. Level 1: first level of management;

b. Levels 2 and 3 in departments or agencies where such a levels are established (intermediate level(s));

c. Final level: chief executive or deputy head or an authorized representative.

~~Whenever there are four (4) levels in the grievance procedure, the grievor may elect to waive either Level 2 or 3.~~

No employer representative may hear the same grievance at more than one level in the grievance procedure.

18.23 Where it appears **to the grievor and, where applicable, the Alliance,** that the nature of the grievance is such that a decision cannot be given ~~below~~ **at** a particular level of authority, any or all the levels except the final level may be eliminated by ~~agreement of the Employer and~~ the grievor, and, where applicable, the Alliance.

RATIONALE

As previously stated, there are a tremendous number of grievances currently outstanding between the Union and the employer. The Union's proposal is intended to expedite the process and to respond to a change that has taken place with respect to how decisions are made concerning grievances on the employer side.

The primary purpose behind the grievance procedure is to provide the parties the opportunities to discuss differences and find resolution, and there is more than one step

in the process to provide union and management representatives at different levels the opportunity to meet and resolve the disagreement.

Over the past several years a trend has developed at CBSA, where decision-making with respect to grievances and union-management matters have been increasingly centralized in Ottawa with CBSA Labour Relations. As a result, Union representatives at the local and regional levels are often told by management representatives that “their hands are tied” with respect to being able to resolve grievances, and that “Ottawa says no”.

The Union submits that if local and regional management are not going to be given the ability or authority to troubleshoot and resolve problems with their respective union counterparts, there is no need for there to be as many steps as currently exist in the process. Indeed, there is little need for there to be more than two steps – the first and the last – when CBSA Labour Relations in Ottawa is going to retain control of the process.

What has been particularly frustrating for the Union and the employees is the fact that management often insists on adhering to every step despite the fact that management has not been given the authority to resolve the grievance at each step.

The steps contained in the current grievance process are predicated upon the idea that management at different levels of the employer’s organization will have the ability and authority to resolve problems. If that is not the case, there is no need for the steps to be adhered to. To meet when one of the parties is unable to resolve the issue is a waste of time and resources for both the Union and the employer.

In light of these facts, the Union respectfully requests that the panel include the Union’s proposals for Article 18 in its recommendation.

ARTICLE 20

~~SEXUAL~~ HARASSMENT AND ABUSE OF AUTHORITY

20.01 The Alliance and the Employer recognize the right of employees to work in an environment free from ~~sexual~~ harassment, **abuse of authority and bullying** and agree that ~~sexual~~ harassment, **abuse of authority and bullying** will not be tolerated in the workplace.

20.02 Definitions:

a) Harassment, violence or bullying includes any action, conduct or comment, including of a sexual nature, that can reasonably be expected to cause offence, humiliation, or other physical or psychological injury, or illness to an employee, including any prescribed action, conduct or comment.

b) Abuse of authority occurs when an individual uses the power and authority inherent in his/her position to endanger an employee's job, undermines the employee's ability to perform that job, threatens the economic livelihood of that employee or in any way interferes with or influences the career of the employee. It may include intimidation, threats, blackmail or coercion.

20.02 20.03

(a) Any level in the grievance procedure shall be waived if a person hearing the grievance is the subject of the complaint.

(b) If, by reason of paragraph (a), a level in the grievance procedure is waived, no other level shall be waived except by mutual agreement.

~~20.03~~ 20.04

By mutual agreement, the parties may use a mediator in an attempt to settle a grievance dealing with ~~sexual~~ harassment. The selection of the mediator will be by mutual agreement **and such selection shall be made within thirty (30) calendar days of each party providing the other with a list of up to three (3) proposed mediators.**

~~20.04~~ 20.05

Upon request by the complainant(s) and/or respondent(s), an official copy of the investigation report shall be provided to them by the Employer, subject to the *Access to Information Act* and *Privacy Act*.

20.06

a) No Employee against whom an allegation of discrimination or harassment has been made shall be subject to any disciplinary measure before the completion of any investigation into the matter, but may be subject to other interim measures where necessary.

b) If at the conclusion of any investigation, an allegation of misconduct under this Article is found to be unwarranted, all records related to the allegation and investigation shall be removed from the employee's file.

RATIONALE

The concept of harassment as solely a sexual issue has been outdated for many years. With the passage of Bill C-65, An Act to amend the Canada Labour Code (harassment and violence) the Parliamentary Employment and Staff Relations Act and the Budget Implementation Bill 2017, it is now time to update the language in the Collective Agreement to reflect the new legislation. Indeed, the Union submits that this is especially important in the case of CBSA and the FB group, where workplace harassment and a chronic climate of fear of reprisal is well documented.

Bill C-65 has three main pillars. It requires the Employer to prevent incidents of harassment and violence; to respond effectively to those incidents when they do occur; and to support affected employees.

The amendments to Part II of the Canada Labour Code apply to all employers and workers in the federally regulated private sector as well as in the public service and Parliament.

The amended Act defines harassment and violence to mean "any action, conduct or comment, including of a sexual nature, that can reasonably be expected to cause offence, humiliation or other physical or psychological injury or illness to an employee, including any prescribed action, conduct or comment" (amended section 122(1)).

It sets out specific duties of employers, including Treasury Board, requiring them to take prescribed measures to prevent and protect, not only against workplace violence but also against workplace harassment. Employers are now also required to respond to occurrences of workplace harassment and violence, and to offer support to affected employees (amended section 125(1) (z.16)).42).

In addition, the Employer must investigate, record and report, not only all accidents, occupational illnesses and other hazardous occurrences known to them, but now also occurrences of harassment and violence, in accordance with the regulations (amended section 125(1)(c)).

These duties also apply in relation to former employees, if the occurrence of workplace harassment and violence becomes known to the Employer within three months of the employee ceasing employment. This timeline, however, may be extended by the Minister in the prescribed circumstances (new sections 125(4) and 125(5).

Employers are additionally required to ensure that all employees are trained in the prevention of workplace harassment and violence and to inform them of their rights and obligations in this regard (new section 125(1) (z.161)). Employers themselves must also undergo training in the prevention of workplace harassment and violence (new section 125(1) (z.162)).

Finally, the Employer must also ensure that the person designated to receive complaints related to workplace harassment and violence has the requisite knowledge, training, and experience (new section 125(1) (z.163)).

In addition to this important legislative alignment, further context of the CBSA workplace climate is necessary. A Fall 2019 Report of the Auditor General of Canada on Respect in the Workplace detailed results of a survey conducted by the Office of the Auditor General of Canada between 6 June and 5 July 2018. At CBSA more than one third (35%) of surveyed respondents (n = 6090) agreed that:

> "If an employee in my workplace was affected by harassment, discrimination, or violence from another employee or management, the employee would fear reprisal as a result of making a complaint."

Further, at CBSA, more than one half (55%) of surveyed respondents (n = 6090) agreed that "civility and respect are serious of significant concerns" and, at CBSA, that about two thirds (66%) of surveyed respondents (n = 6090) agreed that organizational culture is a serious or significant concern.

In the OAG report, CBSA agreed with, indicated an accounting for the implementation of Bill C-65, and pointed to actions taken as of Fall 2019 relative to the three recommendations of the OAG:

- CBSA should develop and implement comprehensive strategies to address harassment, discrimination, and workplace violence. Each strategy should be based on risks and be supported by action plans with clear accountabilities and performance monitoring for continual improvement;
- CBSA should complete and document the results of their analyses to support decisions when handling harassment, discrimination, and workplace violence complaints; and
- CBSA should always inform employees of informal processes available for resolving complaints of harassment and workplace violence. (Exhibit 14)

These actions, however, without reflection in the collective agreement, are insufficient. The Collective Agreement is the guide to which employees turn to understand their rights in the workplace and their terms and conditions of work. It is also the guide that managers use to understand their responsibilities toward employees in the workplace. The Union submits that an obvious way to comply with the new requirement to inform employees of their rights and obligations with respect to harassment and violence is to plainly lay out these obligations in the Collective Agreement so that they are clear, unequivocal, and accessible to everyone in the workplace. Moreover, the Union believes that to not amend Article 20 of the Collective Agreement to reflect these

changes to the Canada Labour Code, which considerably broaden the definition of harassment beyond what currently exists in the Article, could result in confusion with respect to behaviours that are not acceptable in the workplace.

The Union therefore respectfully requests that the Commission add the proposed amendments to this Article to its recommendations.

ARTICLE 22

HEALTH AND SAFETY

PSAC PROPOSAL

22.01 The Employer shall make reasonable provisions for the occupational safety and health of employees. The Employer will welcome suggestions on the subject from the Alliance, and the parties undertake to consult with a view to adopting and expeditiously carrying out reasonable procedures and techniques designed or intended to prevent or reduce the risk of employment injury.

22.02 The Employer will ensure that no employee will have to work alone on any shift or at any work location. An employee working in a joint-operation situation shall not be considered to be working alone.

RATIONALE

In August of 2006 the Government of Canada announced that steps would be taken to ensure that border security personnel are “no longer required to work alone”. This announcement was the culmination of many years of effort on the part of the Union to have border services personnel ‘doubled-up’. An extensive study of border services working conditions commissioned by the Customs and Excise Union and conducted by Northgate Group Corporation in 2005 found that:

> (t)here was universal condemnation of Officers being forced to work alone at ports of entry, including criticism from Officers not in those circumstances themselves. The Study included interviews with Officers who had been physically attacked or had weapons pulled on them while working alone. One of the several hostage situations reported in this (report) occurred while an Officer was working alone. Many Officers also explained that working “alone” included circumstances at night where the task being performed (primary/secondary) was being performed by a single person. This is especially acute in circumstances where the physical layout of the facilities or the place being searched is such that Officers are out of sight of one another, particularly where a traveler has been referred for closer examination. It was clear from many respondents that the work-alone practice, in all its forms, results

> in Officers altering the manner in which they perform their duties, which has the clear potential to compromise public safety. [15]

That same study also goes on to point out that:

> Officers working alone are tasked with the same duties, and face the same risks as Officers at larger ports of entry, but they have no assistance from other Officers or the immediate proximity of a law enforcement agency. This fact also severely compromises the Officer's ability to perform the duties essential to the protection and safety of the Canadian public… All Officers who were interviewed that were required to work alone, and every other Officer that commented on the subject, condemned the practice as jeopardizing Officer safety and their ability to do the job on behalf of the public. Many Officers stated that working alone is the most dangerous job in CBSA.[16]

Lastly, the Northgate Report recommended that:

> (…) although Northgate does not make a recommendation regarding the appropriate number of Officers at certain points of entry, the overwhelming nature of the data received during the interviews suggest that the Officer and public safety concerns inherent in work-alone situations are such that CBSA should cease such practices.[17]

The Senate Committee on National Security and Defense was of the same mind when it issued a report titled "Borderline Insecure" in 2005. In light of the inherent danger associated with work alone situations for both officers and the broader Canadian public, the committee recommended that:

> (t)he Canada Border Services Agency ensure that at least half of all shifts at land border crossings be staffed by at least two persons by Dec. 31, 2006; and that all shifts at all land border crossings be staffed by at least two persons by Dec. 31, 2007. (Exhibit 32)

In September of 2008 the CBSA announced its Doubling Up Policy. At the time the policy was hailed by the Union as representing serious progress towards resolving on-

[15] Northgate, p. 88. Online: https://www.ciu-sdi.ca/wp-content/uploads/2011/02/Northgate.pdf (Exhibit 7)
[16] Northgate, p. 91. Online: https://www.ciu-sdi.ca/wp-content/uploads/2011/02/Northgate.pdf (Exhibit 7)
[17] Northgate, p. 91. Online: https://www.ciu-sdi.ca/wp-content/uploads/2011/02/Northgate.pdf (Exhibit 7)

going disputes between the parties with respect to work-alone situations. Indeed, the policy states that:

> It is the policy of the Canada Border Services Agency (CBSA) that no CBSA officers be required to work alone at a CBSA office where officers carry out duties that require enforcement of CBSA program legislation or the *Criminal Code* or that may lead to the enforcement of such legislation. (See footnote 75 of the Evaluation of Small or Remote Ports of Entry, Exhibit 33)

With the announcement and implementation of this new policy in 2008, and given the clear demonstration on the part of the CBSA and the federal government to resolve the issue of work alone situations with its introduction, the parties were able to reach a collective agreement soon after without reference to work alone situations. Since that time a great many previous single officer ports of entry have been doubled up.

However, despite the progress made since the policy's introduction in 2008, serious problems remain in that there are a great many occasions where employees are required to work alone in 'doubled up' ports. This phenomenon tends to manifest itself in two ways. First, there are many situations, particularly at small or medium-sized ports, where tasks such as primary and secondary are performed by a single person out of sight of other officers. For example, it is not uncommon in some ports for employees to be required to conduct searches in secondary – in the trunks or back seats of vehicles, underneath the hood of a vehicle, etc. – alone and as a result of the duties being performed employees can be put in a vulnerable or compromising position. There are also situations when an employee is required to work primary alone and out of earshot and out of view of other officers. This too leaves employees more vulnerable than they might otherwise be if there was a fellow officer on-hand.

Second, employees continue to be required to work alone, even at ports that have been doubled up. One such example, raised by the Union in negotiations, is the port at Goose Bay, Newfoundland. In Goose Bay – a 'doubled up' port - it is common for employees to be required to work alone, so much so in fact that CBSA management

has developed a protocol for employees working alone. The protocol requires that BSO's working alone call the CBSA port in Gander once per hour to 'touch base'. (Exhibit 34) Gander is 1,261 kilometers (via Trans Labrador Highway) from Goose Bay. Again, Goose Bay has been deemed doubled up by CBSA.

The Union submits that it is absurd to assume that BSO's 1,261 kilometers away will be able to assist a co-worker in the event that there is an incident. It is equally absurd to assume that a BSO will necessarily have the time to pick up the phone and make a call in the event that there is a serious incident at the port. Goose Bay is not the only location where such situations exist. Thus, not only do work alone ports remain, but there are also work alone, doubled up ports.

The Union's proposal would address these problems. In effect, what the Union seeks is to enshrine into the parties' collective agreement both the recommendation of the Senate Committee on National Security and Defence and the commitment made by Prime Minister Stephen Harper in 2006, amplified by the Office of the Auditor General's October 2007 'Keeping the Border Open and Secure—Canada Border Services Agency' report, and by the CBSA in 2008: "to eliminate situations where officers work alone". (Exhibit 35) Despite assurances by CBSA that it is committed to ensuring that employees not be required to work alone, it is not living up to that commitment, and this failure on the part of CBSA to honour that commitment puts CBSA employees - and ultimately public safety – at risk. Again, the Senate Committee on National Security and Defence stated in 2005 that, with respect to assurances made by CBSA that adequate measures were in place to ensure border security: "The Committee is in possession of a growing pile of documentation – in the form of timesheets from a number of border posts – that directly contradicts CBSA's assurances." (Exhibit 36)

The Union recognizes that there may be operational settings where an employee may be excluded from the doubling up initiative – such as an employee working in a joint operation with personnel from other law enforcement, or in a telework situation - and the Union has signaled a willingness to negotiate these issues with the Employer.

However, the Employer has categorically refused to entertain the inclusion of any provision into the parties' collective agreement that provides an obligation on the part of the Employer to ensure that no employee be required to work alone.

In light of this, and in light of the on-going problems associated with both the Employer's policy and the Employer's failure to meet the objectives set by the government to ensure employee safety, and in light of the cuts that have been taking place across the public service – including CBSA – over the last several years, the Union respectfully requests that the Commission include its proposal to eliminate work alone situations in the Commission's recommendation.

ARTICLE 24
TECHNOLOGICAL CHANGE

PSAC PROPOSAL

ARTICLE 24
TECHNOLOGICAL CHANGE

24.01 ~~The parties have agreed that, in cases where, as a result of technological change, the services of an employee are no longer required beyond a specified date because of lack of work or the discontinuance of a function, Appendix C, Workforce Adjustment, will apply. In all other cases, the following clauses will apply~~. **The parties agree that no employee shall suffer job loss as a result of technological change, nor shall any bargaining unit positions be eliminated as a result of technological change.**

24.02 In this Article, "technological change" means:

(a) the introduction by the Employer of equipment ~~or~~ material, **systems or software** of a different nature than that previously utilized;

and

(b) a change in the Employer's operation directly related to the introduction of that equipment, ~~or~~ material, **systems or software.**

24.03 Where technological change is to be implemented, the Employer will seek ways and means of minimizing adverse effects on employees which might result from such changes.

24.04 The Employer agrees to provide as much advance notice as is practicable but, except in cases of emergency, not less than ~~one hundred and eighty (180)~~ **three hundred and sixty (360)** days' written notice to the Alliance of the introduction or implementation of technological change when it will result in significant changes in the employment status or working conditions of the employees.

24.05 The written notice provided for in clause 24.04 will provide the following information:

(a) the nature and degree of the technological change;
(b) the date or dates on which the Employer proposes to effect the technological change;
(c) the location or locations involved;
(d) the approximate number and type of employees likely to be affected by the technological change;
(e) the effect that the technological change is likely to have on the terms and conditions of employment of the employees affected.
(f) **the business case and all other documentation that demonstrates the need for the technological change and the complete formal and documented risk assessment that was undertaken as the change pertains to the employees directly impacted, all employees who may be impacted and to the citizens of Canada if applicable, and any mitigation options that have been considered.**

24.06 As soon as reasonably practicable after notice is given under clause 24.04, the Employer shall consult meaningfully with the Alliance, **at a mutually agreed upon time,** concerning the rationale for the change and the topics referred to in clause 24.05 on each group of employees, including training.

24.07 The parties agree that technological change shall not be implemented where such implementation may potentially put national security at risk.

24.08 When, as a result of technological change, ~~the Employer determines that~~ an employee requires new skills or knowledge in order to perform the duties of the employee's substantive position, the Employer will ~~make every reasonable effort to~~ provide the necessary training during the employee's working hours without loss of pay and at no cost to the employee.

RATIONALE

Technological change has been a matter of significant discord between the parties, primarily because of the CBSA's introduction of Automated Border Clearance Self-Serve Kiosks, known generally within the bargaining unit as "ABC machines".

ABC machines were first introduced in 2012, beginning Pierre Elliott Trudeau Airport in Montreal and Vancouver International Airport. ABC machines were first introduced at Pearson International Airport in Toronto in 2013. They have since been introduced at Macdonald-Cartier Airport in Ottawa and Edmonton International Airport.

ABC machines provide travelers with ability to confirm their identity and complete an on-screen declaration. Beginning this year these now include Primary Inspection Kiosks, which provide for travelers to scan their own travel document, have their photo taken and answer questions to complete their declaration. Once the process is complete the machine produces a receipt and the receipt is given to a Border Services Officer. The only travelers who do not have access to the use of such machines are unaccompanied minors and travelers who do not have machine-readable travel documents.

Increasingly, where such machines are in use, many if not all travelers are encouraged to use the machines.

In addition to ABC machines, the CBSA has begun exploring the implementation of the Remote Traveler Processing Program at land border ports of entry. The pilot project for the initiative is currently underway at the port of entry at Morses Line, Quebec. The CBSA is considering doing something similar at 19 other points of entry across Canada.

To quote an article on the initiative in the Toronto Star last September, the program "works much like a high-tech 'drive thru'. Those seeking to enter Canada at Morses Line enter into a closed garage and park next to a kiosk that allows them to communicate with a border agent, show their passport and even pay duties on alcohol, tobacco or other goods with the swipe of a credit card." (Exhibit 37) Any individual crossing at Morses Line speaks with a Border Services Officer in Hamilton, Ontario. The nearest border crossing that is staffed is 13 kilometers away.

The Union has raised objections repeatedly about the changes being made by CBSA with respect to machines at airports and at land ports of entry. There are two major objections. The first is related to concerns about safety and security. The second is related to employment security.

With respect to safety and security, Border Services Officers undergo considerable training prior to being put on strength. In addition to being trained in control defence

tactics and firearm usage, BSOs are trained in observation and detection. Body language, tone of voice, many different behavioural and other factors are taken into account when determining whether or not to admit an individual into Canada, or whether or not a Canadian national should be subject additional scrutiny upon entry into Canada.

To state the obvious, an ABC machine is incapable of performing any of these tasks. As Customs and Immigration National President Jean-Pierre Fortin stated in 2016 in the context of the Morses Line installation,

> *The problem that we have is that in talking to someone through a camera, you won't be able to detect their level of nervousness and you can't have a proper view of everything. And we're not certain that with the very expensive technology is going to save (CBSA) money compared to keeping two agents at the post.*

Fortin the goes on to state:

> *If there's a car that goes to (Morses Line), speaks through a telephone and the officer in Hamilton gets suspicious, then he would have to call another border to say I think the car should be looked at. Do you think for a second that the person is going to wait an hour for a CBSA agent to arrive, especially if he knows we're going down there to get him?* (Exhibit 37)

Mr. Fortin raised the issue in a meeting with Public Safety Minister Ralph Goodale in October of 2016.

With respect to ABC machines the same is also true with respect to the lack of interaction with a Border Services Officer is also of concern to the Union.

In a letter addressed to CBSA President Linda Lizotte-MacPherson in August of 2016, Mr. Fortin stated that succinctly the Union's position, that "technology cannot replace a BSO, it can only serve to assist them", and that to reduce staff at ports of entry with an eye to replacing with machines "almost certainly weakens our country's first line of

defence".(Exhibit 38) Mr. Fortin also goes on to state in said letter that experienced officers operating the Remote Traveller Processing Pilot System indicated that the system is not secure.

> *The (officers) point out that they do not have a full and detailed view of the vehicles crossing at the POE. They can view the vehicle from multiple angles using a number of screens but this does not provide the officer with a good sense of the overall environment and surroundings. This method of processing runs counter to everything they have been taught. For example, they cannot gauge a traveller's level of nervousness or see interactions between travellers. Their "sixth sense" is not used and in some cases, when they let a vehicle through, they are left with the uneasy feeling that had they been there in person, they might not have given clearance to that traveller. It is clear to BSOs working on this pilot project that for security reasons a continuation or an expansion of this project would not be in Canada's best interest.* (Exhibit 38)

A subsequent letter on the issue of Primary Inspection Kiosks was sent by Mr. Fortin to CBSA Vice-President Martin Bolduc in late 2017 on behalf of the CIU Executive, stating that such machines should not be used to replace trained officers and should only be used as part of an "integrated" approach. (Exhibit 39)

Issues related to Primary Inspection Kiosks have also been raised repeatedly in National Health and Safety Committee meetings. The CBSA's failure to address the concerns raised by the Union with respect to Primary Inspection Kiosks led to the filing of complaint under Section 127.1 of Part II of the Canada Labour Code.

The proposals being made by the Union with respect to Article 24 are intended to rectify on-going problems concerning technological change in CBSA workplaces.

The second proposed change to 24.03 is consistent with what the Union is proposing for 24.01 – namely that 24.01 be eliminated from the collective agreement and instead a line be inserted in 24.03 ensuring that bargaining unit positions will not be eliminated because of technological change.

The Union as previously stated is on record as opposing a number of the changes being implemented, or on some cases, the means via which they are being implemented. For instance, the Union has indicated that the introduction of ABC machines could be acceptable in certain circumstances, provided that the CBSA maintain roving teams of BSO's to monitor travellers as they enter the country. Here is an example where technological change could be implemented, while at the same time ensuring that the important work done by BSO's in looking for 'indicators' would continue.

With respect to 24.01 and 24.03, there is precedent for what the Union is proposing. The collective agreement covering over 50,000 Canada Post employees states not only that employees' jobs will be protected, but that in fact any dispute between the parties related to the actual technological change itself is subject to arbitration. (Exhibit 40)

Members of the FB bargaining unit do extremely important work. They are the first line of defence on Canada's borders. The Union submits that the replacing of officers with machines is not consistent with CBSA's mandate as it relates to public safety. What the Union is proposing is in the interest of the employees, the employer and quite frankly all Canadians. The language being proposed by the Union would ensure that the implementation of technological change could not be done in such a way as to reduce the number of law enforcement professionals working on Canada's borders and inland ports of entry.

It must be noted that the 2021 Federal Budget introduced "modernizing border travel and trade" and "transforming the border experience through contactless and automated interactions" on a significant scale:

> "Budget 2021 proposes to provide $656.1 million over five years, beginning in 2021-22, and $123.8 million ongoing, to the Canada Border Services Agency (CBSA) to modernize our borders. Funding will transform the border experience for travelers through touchless and automated interactions, enhance CBSA's ability to detect contraband, and help protect the integrity of our border infrastructure. Funding will also support three Canadian preclearance pilots in the

United Sates that would enable customs and immigration inspections to be completed before goods and travelers enter Canada."[18]

This announcement is problematic on several levels and the PSAC-CIU was quick to react.[19]

The Union's proposal for 24.07 would provide the Union and its members the opportunity to challenge decisions made by CBSA that the employees believe could put national security at risk. Article 1 of the parties' current agreement states that the parties are committed to the well being and increased efficiency of the public service. Given the work that members of the FB bargaining unit perform as law enforcement professionals, what the Union is proposing for 24.07 with respect to national security is equally important – to the employees and presumably the CBSA.

The Union proposal at Article 24.04 adjusts the written notice timeframe to better reflect the time it takes to plan for, implement and adapt the workplace environment, and adapt workers to the changed work environment. The current 180 days is insufficient to respond to significant changes in the employment status or working conditions of affected employees.

Finally, the Union proposes additional disclosure in Article 24.05 (f) that would provide it with the business case for the technological change and all documented risk assessments. PSAC sought this kind of documentation early in the process which created the then new and ultimately disastrous Phoenix pay system, but the information was denied by the Treasury Board at the time. When the business case was finally released publicly two years after Phoenix went live, it became clear that the business case failed to account for real risks to pay specialists or their clients, public service workers and members. None of the risks identified in the formative documents identified the overwork and stress that has been experienced by pay specialists because of system failures and lack of capacity. The idea that employees might not get paid

[18] Federal Budget 2021. A Recovery Plan for Jobs, Growth, and Resilience, p. 144 & 493 (Exhibit 71)
[19] Border automation concerns PSAC-SDI: https://www.ciu-sdi.ca/fr/2021/04/psac-ciu-raise-border-automation-concerns-with-government/

accurately, or get paid at all, was not contemplated. The Union is seeking to expand the language in Article 24.05 so that it may effectively and fulsomely advocate on behalf of its members and meet its legal duties. An open and honest disclosure of the plans and an opportunity for the Union to help assess risks and problems could have led to much different decisions that may have alleviated or even avoided the Phoenix pay disaster.

Over the last several years technological change has become a matter of considerable discord between the Union and the CBSA. The current language places excessive and unnecessary restrictions on the Union and provides for protections that are inferior to what has been negotiated elsewhere in the federal public sector. In light of these facts, the Union respectfully requests that its proposals for Article 24 be included in the Commission's recommendation.

ARTICLE 25

HOURS OF WORK

25.12

(a) An employee on day work whose hours of work are changed ~~to extend before or beyond the stipulated hours of 7 a.m. and 6 p.m., as provided in paragraph 25.06(b),~~ and who has not received at least seven (7) days' notice in advance of the starting time of such change shall be paid for the first (1st) day or shift worked subsequent to such change at the rate of time and one-half (1 1/2) for the first seven decimal five (7.5) hours and double (2) time thereafter. Subsequent days or shifts worked on the revised hours shall be paid for at straight-time rate, subject to Article 28, Overtime.

(b) **Late-Hour Premium**
An employee who is not a shift worker and who completes his workday in accordance with the provisions of paragraph 25.11(b) shall receive a late-hour premium of seven dollars ($7) per hour for each hour worked before 7 a.m. and after 6 p.m. The late-hour premium shall not apply to overtime hours.

General

Shift Work

**

25.13 When, because of operational requirements, hours of work are scheduled for employees on a rotating or irregular basis, or on a non-rotating basis where the employer requires employees to work hours later than 6 p.m. and/or earlier than 7 a.m., they shall be scheduled so that employees, over a period of not more than fifty-six (56) calendar days:

(a) on a weekly basis, work an average of thirty-seven decimal five (37.5) hours and an average of five (5) days;

(b) work seven decimal five (7.5) consecutive hours per day, exclusive of a one-half (1/2) hour meal period;

(c) obtain an average of two (2) days of rest per week;

(d) obtain at least two (2) consecutive days of rest at any one time except when days of rest are separated by a designated paid holiday which is not worked; ~~the consecutive days of rest may be in separate calendar weeks.~~

25.14 The Employer will make every reasonable effort:

(a) not to schedule the commencement of a shift within sixteen (16) hours of the completion of the employee's previous shift;

and

(b) to avoid excessive fluctuation in hours of work.

25.15 The staffing, preparation, posting and administration of shift schedules is the responsibility of the Employer.

25.16 The Employer shall set up a master shift schedule for a fifty-six (56) day period, posted fifteen (15) days in advance, which will cover the normal requirements of the work area.

**

25.17 Shift Schedule - Reopener

(a) If the Employer reopens a shift schedule due to operational requirements, or a line becomes vacant, the Employer will determine the qualifications required prior to canvassing all employees covered by this specific schedule.

Should more than one employee meeting the qualifications required select the same line on the schedule, years of service ~~as defined in subparagraph 34.03(a)(i)~~ will be used as the determining factor to allocate the line.

(b) In populating a newly established schedule, as developed by the Employer, the Employer will canvass all employees covered by the specific schedule for volunteers to populate the schedule.
Should more than one employee meet the qualifications required select the same line on the schedule, years of service ~~as defined in subparagraph 34.03(a)(i)~~ will be used as the determining factor to allocate the line.

(c) Subject to paragraph (a) above, by mutual consent the parties may agree to conduct a re-population of schedules at any point over the life of the schedule.

For greater clarity, when a vacant line is selected, that line will continue to follow the pre-established pattern, according to the existing schedule.

25.18 Shift Schedule – Vacant Lines

(a) In the event a line on a schedule becomes vacant, the line shall then be offered to employees working in the same worksite. Should more than one employee meeting the qualifications required select the same line on the schedule, years of service will be used as the determining factor to allocate the line.

(b) Should no employee meeting the criteria in (a) above select the vacant line, the line shall then be offered to employees working in the same district as the vacant line. Should more than one employee meeting the qualifications required select the same line on the schedule, years of service will be used as the determining factor to allocate the line.

(c) Should no employee meeting the criteria in (a) and (b) above select the vacant line, the line shall then be offered to employees working in the same region as the vacant line. Should more than one employee meeting the qualifications required select the same line on the schedule, years of service will be used as the determining factor to allocate the line.

(d) Should no employee meeting the criteria in (a), (b) and (c) above select the vacant line, the line shall then be offered to all other employees in the bargaining unit. Should more than one employee meeting the qualifications required select the same line on the schedule, years of service will be used as the determining factor to allocate the line.

25.19 Except as provided for in clauses 25.23 and 25.24, the standard shift schedule is:

(a) 12 midnight to 8 a.m., 8 a.m. to 4 p.m., and 4 p.m. to 12 midnight

or, alternatively,

(b) 11 p.m. to 7 a.m., 7 a.m. to 3 p.m., and 3 p.m. to 11 p.m.

25.20 A specified meal period shall be scheduled as close to the midpoint of the shift as possible. It is also recognized that the meal period may be staggered for employees on continuous operations. However, the Employer will make every effort to arrange meal periods at times convenient to the employees.

25.21

(a) Where an employee's scheduled shift does not commence and end on the same day, such shift shall be considered for all purposes to have been entirely worked:

(i) on the day it commenced, where half (1/2) or more of the hours worked fall on that day;

or

(ii) on the day it terminates, where more than half (1/2) of the hours worked fall on that day.

(b) Accordingly, the first (1st) day of rest will be considered to start immediately after midnight of the calendar day on which the employee worked or is deemed to have worked his or her last scheduled shift, and the second (2nd) day of rest will start immediately after midnight of the employee's first (1st) day of rest, or immediately after midnight of an intervening designated paid holiday if days of rest are separated thereby.

25.22

(a) An employee who is required to change his or her scheduled shift without receiving at least seven (7) days' notice in advance of the starting time of such change in his or her scheduled shift shall be paid for the first (1st) shift worked on the revised schedule at the rate of time and one-half (1 1/2) for the first (1st) seven decimal five (7.5) hours and double (2) time thereafter. Subsequent shifts worked on the revised schedule shall be paid for at straight-time rate, subject to Article 28, Overtime.

(b) Every reasonable effort will be made by the Employer to ensure that the employee returns to his or her original shift schedule and returns to his or her originally scheduled days of rest for the duration of the master shift schedule without penalty to the Employer.

25.23 Provided sufficient advance notice is given, the Employer **shall** ~~may~~:

(a) authorize employees to exchange shifts if there is no increase in cost to the Employer;

and

(b) notwithstanding the provisions of paragraph 25.13(d), authorize employees to exchange shifts for days of rest if there is no increase in cost to the Employer.

25.23

~~(a) Where shifts other than those provided in clause 25.18 are in existence when this Agreement is signed, the Employer, on request, will consult with the Alliance on such hours of work and, in such consultation, will establish that such shifts are required to meet the needs of the public and/or the efficient operation of the service.~~

~~(b) Where shifts are to be changed so that they are different from those specified in clause 25.18, the Employer, except in cases of emergency, will consult in advance with the Alliance on such hours of work and, in such consultation, will establish that such hours are required to meet the needs of the public and/or the efficient operation of the service.~~

~~(c) Within five (5) days of notification of consultation served by either party, the parties shall notify one another in writing of the representative authorized to act on their behalf for consultation purposes. Consultation will be held at the local level for fact-finding and implementation purposes.~~

25.24 Variable Shift Schedule Arrangements

(a) Notwithstanding the provisions of clauses 25.06 and 25.13 to 25.23 inclusive, consultation may be held at the local level with a view to establishing shift schedules which may be different from those established in clauses 25.13 and 25.18. Such consultation will include all aspects of arrangements of shift schedules.

(b) Once a mutually acceptable agreement is reached at the local level, the proposed variable shift schedule will be submitted at the respective Employer and Alliance headquarters levels before implementation.

(c) Both parties will endeavour to meet the preferences of the employees in regard to such arrangements.

(d) It is understood that the flexible application of such arrangements must not be incompatible with the intent and spirit of provisions otherwise governing such arrangements. Such flexible application of this clause must respect the average hours of work over the duration of the master schedule and must be consistent with operational requirements as determined by the Employer.

(e) Employees covered by this clause shall be subject to the provisions respecting variable hours of work established in clauses 25.25 to 25.28 inclusive.

Terms and Conditions Governing the Administration of Variable Hours of Work

25.25 The terms and conditions governing the administration of variable hours of work implemented pursuant to clauses 25.09, 25.10 and 25.24 are specified in clauses 25.25 to 25.28 inclusive. This Agreement is modified by these provisions to the extent specified herein.

25.26 Notwithstanding anything to the contrary contained in this Agreement, the implementation of any variation in hours shall not result in any additional overtime work or additional payment by reason only of such variation, nor shall it be deemed to prohibit the right of the Employer to schedule any hours of work permitted by the terms of this Agreement.

25.27

(a) The scheduled hours of work of any day as set forth in a variable schedule specified in clause 25.25 may exceed or be less than seven decimal five (7.5) hours; starting and finishing times, meal breaks and rest periods shall be determined according to operational requirements as determined by the Employer; and the daily hours of work shall be consecutive.

(b) Such schedules shall provide for an average of thirty-seven decimal five (37.5) hours of work per week over the life of the schedule.

**

(i) Unless otherwise mutually agreed upon, the maximum life of a shift schedule shall be six (6) months.

(ii) The maximum life of other types of schedule shall be twenty-eight (28) days except when the normal weekly and daily hours of work are varied by the Employer to allow for summer and winter hours in accordance with clause 25.10, in which case the life of a schedule shall be one (1) year.

(c) Whenever an employee changes his or her variable hours or no longer works variable hours, all appropriate adjustments will be made.

25.28 Specific Application of this Agreement

For greater certainty, the following provisions of this Agreement shall be administered as provided herein:

a. **Interpretation and definitions (clause 2.01)**
“Daily rate of pay” shall not apply.

b. **Minimum number of hours between shifts**
Paragraph 25.14(a), relating to the minimum period between the termination and commencement of the employee's next shift, shall not apply.

c. **Exchange of shifts (clause 25.22)**
On exchange of shifts between employees, the Employer shall pay as if no exchange had occurred.

d. **Overtime (clauses 28.04 and 28.05)**
Overtime shall be compensated for all work performed in excess of an employee's scheduled hours of work on regular working days or on days of rest at **double (2)** time ~~and three-quarters (1 3/4).~~

e. **Designated paid holidays (clause 30.07)**

i. ~~A designated paid holiday shall account for seven decimal five (7.5) hours~~.

ii. When an employee works on a designated paid holiday, the employee shall be compensated, in addition to the pay for the hours specified in subparagraph (i), at ~~time and one-half (1 1/2) up to his or her regular scheduled hours worked and~~ at double (2) time for all hours worked in excess of his or her regular scheduled hours.

f. **Travel**
Overtime compensation referred to in clause 32.06 shall only be applicable on a workday for hours in excess of the employee's daily scheduled hours of work.

g. **Acting pay**
The qualifying period for acting pay as specified in paragraph 62.07(a) shall be converted to hours.

h. **Leave**

i. ~~Earned leave credits or other leave entitlements shall be equal to seven decimal five (7.5) hours per day~~.

ii. When leave is granted, it will be granted on an hourly basis and the number of hours debited for each day of leave shall be equal to the number of hours of work scheduled for the employee for the day in question.

25.29 An employee required by the Employer to work overtime consistent with Article 28 shall receive a minimum of eight (8) hours rest prior to returning to duty. Any pre-scheduled hours that fall within said eight (8) hour rest period shall be considered hours worked.

APPENDIX B
MEMORANDUM OF UNDERSTANDING
BETWEEN
THE TREASURY BOARD OF CANADA
AND
THE PUBLIC SERVICE ALLIANCE OF CANADA
WITH RESPECT TO THE
VARIABLE SHIFT SCHEDULING ARRANGEMENTS

This memorandum is to give effect to the understanding reached between the Employer and the Public Service Alliance of Canada in respect of employees in the Border Services (FB) bargaining unit.

1. Consultation process

The intent of this appendix is to provide the parties with a process to facilitate reaching agreement at the local level, within prescribed timeframes. **The parties agree to negotiate in good faith, and shall make every reasonable effort to reach a negotiated VSSA.**

RATIONALE

A significant majority of workers in the FB bargaining unit are shift workers, and shift scheduling matters have been and continue to be the source of both employee frustration and on-going friction between the parties at every level. Much of this can be attributed to the fact that prior to 2007 workers currently in the FB bargaining unit represented a relatively small minority within a much larger bargaining unit (PA) where day workers dominated. As a result, matters related to shift scheduling often went unresolved prior to the 2007 round. In the previous three rounds of bargaining some improvements were made, particularly with the inclusion of Appendix B into the collective agreement and the expansion of seniority rights to all shift workers in the bargaining unit. However, despite the changes made in the previous round, serious problems in the workplace remain. Furthermore, serious issues have arisen over the life of the current agreement for day workers as well. The Union's proposals for Article 25

are geared towards rectifying all of these problems, for shift and day working employees alike, while at the same time introducing rights – such as a paid meal period and firearm practice time – that are standard in the law enforcement community.

Shift Work

With respect to shift work the Union is making proposals to address problems related to the scheduling of shift workers in non-VSSA environments and the filing of vacant lines.

With respect to non-VSSA workplaces, Article 25 of the current agreement provides the Employer with considerable discretion concerning how schedules are built and to whom hours are assigned. While Article 25.18 states that standard shift schedules shall be 12 a.m.–8 a.m. 8 a.m.–4 p.m., 4 p.m.–12 a.m., or alternatively 11 p.m.–7 a.m., 7 a.m-3 p.m., the contract provides alternate clauses (Articles 25.13, 25.22 and 25.23) with respect to scheduling in recognition of the fact that the shifts provided for under 25.18 are often not operationally feasible at CBSA.

Article 25.24 provides for Variable Shift Scheduling Arrangements (VSSA), which are shift scheduling arrangements that deviate from the 25.18 framework and are negotiated at the local level between the parties. The vast majority of shift workers covered by the FB collective agreement are subject to VSSA's, and as of 2017 there are over ninety VSSA's in effect across Canada. Appendix B of the parties' agreement lays out the process by which VSSA's are negotiated and implemented. Appendix B and 25.17 also define the seniority-based process via which employees are placed on schedules governed by VSSA's.

Article 25.13 states that shift working employees are to be scheduled over a period of not more than 56 days, so that "on a weekly basis work an average of 37.5 hours and an average of 5 days", while 25.23 provides the Employer with the prerogative to implement schedules that deviate from 25.17 provided that management consults with the Union and establishes that such hours are "required to meet the needs of the public and/or the efficient operation of the service."

These clauses have been interpreted by the Employer on one more than one occasion as providing management with the prerogative to build virtually whatever schedule it sees fit in the absence of a negotiated VSSA. At the bargaining table in the past the Union cited two specific examples of non-VSSA schedules implemented by CBSA management to highlight the problems that this causes, one being a schedule from St John's Airport in Newfoundland, another from John G. Diefenbaker Airport in Saskatoon. The St. John's example provided by the Union demonstrated that there were situations where certain employees were required to work schedules with 3 different start times in a given week, ranging from 8 am to 4 pm. In the case of the schedule provided with respect to Saskatoon, there are 14 different start times, and in some cases employees were required to work a different start time every day, ranging from 8 am to 8 pm, with shifts running anywhere from 4 hours in length to 7.5 hours in length. (Exhibit 41) These aforementioned schedules were not negotiated and agreed to by the Union. They were unilaterally imposed on employees by management.

The unilateral implementation of these sorts of schedules, or the threat of their implementation during VSSA talks, has led to considerable turmoil in a number of workplaces across the country. The impact of the introduction of one such schedule on local labour relations is well documented in an arbitral award issued in 2009 in response to a grievance filed by the PSAC with respect to the Employer's interpretation of 25.22 at Lester B. Pearson airport in Toronto (PSLRB 569-02-34). There have also been problems due to the imposing of schedules on workers in Lansdowne, Ontario.

Language that provides the Employer the prerogative to create schedules that deviate from what is established in the collective agreement, and to do so without Union consent, is unusual in a unionized environment. For example, Treasury Board employees in the CX bargaining unit work in a 24/7 law enforcement environment, yet unlike employees in the FB unit, the length of shifts are clearly defined in the collective agreement, and schedules are determined by joint scheduling committees.(Exhibit 42) The model contained in the CX collective agreement is analogous to what the Union is seeking in this round of bargaining for the FB group.

The same is also true for other groups that work in operational settings where scheduling needs bear some resemblance to those of CBSA. For example, while bridge authority and Canadian Air Transport Security Authority (CATSA) workers do not perform the same duties or have the same responsibilities as FB workers, their hours of work are generally predicated upon operational needs that are dictated by traffic volumes. Set shift lengths and set hours per week are the standard for collective agreements covering shift-working bridge authority and CATSA workers (Exhibit 43)

What the Union is proposing is that the same concept be applied to shift workers in the FB bargaining unit that are not covered by a VSSA. Under the Union's proposal for 25.13, shift working employees would be scheduled 5 consecutive days a week, with two consecutive days off, as is standard in most unionized (and non-union) work environments. Should that not be operationally feasible, the Employer would enter into VSSA talks with the Union at the local level to devise schedules consistent with the process outlines in Appendix B of the parties' agreement.

As previously noted, there are well over 90 VSSA's in effect across Canada, from Halifax to Victoria, in every operational setting, from small 3-officer land border ports of entry to airports to maritime settings. Thus, it is clear that the parties are capable of negotiating mutually agreeable schedules. The Union's proposal would ensure that, in the absence of a VSSA, there would be clear parameters around shift length and scheduling. This in turn would preclude the Employer from imposing shift schedules that are severely disruptive to the workplace and to employees lives, and would ensure that problems that have arisen in a number of workplaces related to the Employer's imposing of unreasonable schedules not happen again. It would also bring working conditions in line with what is standard for shift workers working in operational environments that are subject to similar scheduling pressures.

Years of Service

The other factor that is common in collective agreements covering shift workers in environments that are subject to similar operational pressures is that of years of service recognition for the purposes of scheduling. Years if service recognition in the context of scheduling, as constituted in its proposals for Article 25, represents a key issue for the Union for this round of bargaining.

The Union is proposing that years of service be applied more broadly in that it would be applied beyond those working under a particular schedule or VSSA. Under the Union's proposed 25.22, a vacant line would be offered first to employees covered by the schedule where the vacancy occurs. This is consistent with what is applied under the current agreement. However, in the event that there are no volunteers working under the schedule where the vacancy has occurred, the employer would then offer the line to workers in the same workplace, followed by workers in the same district, followed by workers in the same region. At each level the shift would be assigned to the most senior, qualified employee that expresses interest. The Union is proposing this system as a means to ensure that there are fair and transparent systems in place for when employees are moved from one schedule to another. At present, movement of employees from one schedule to another is entirely at the employer's discretion, which has led to a number of problems.

To provide but one example, on a number of occasions in the past the Employer indicated to employees at the CBSA facility in Coutts, Alberta that it required employees to temporarily work shifts at its facility in Chief Mountain, Alberta. A number of employees in each instance came forward expressing an interest in working the shifts at Chief Mountain, and on several occasions these employees have been told that the shifts are to be assigned to new hires. Similar situations have arisen time and time again. There have been instances where qualified employees that are seasonal with years of service in New Brunswick are passed over for available shifts in a given work location while new hires are brought in to do the work. The same is also true in the Halifax area, where employees have in the past been regularly moved between four

different locations – some locations having at least 30 kms distance between them - with no recognition of years of service, and with no solicitation of volunteers having taken place. There have been instances where workers at the Winnipeg Airport have expressed an interest in taking an available shift at the Winnipeg Commercial office – a 5-minute drive from the airport - only to have the shift assigned to a new hire. What the Union is proposing would ensure that there is transparency and fairness with respect to how schedules are populated and would ensure that employees are afforded opportunities that are not available now.

The Union is not suggesting that the number of staff required to work in a given location or at given times be governed by the parties' collective agreement. Nor is the Union proposing language governing how the work gets done by CBSA employees. What is being proposed is a mere expansion of what is currently being done now with respect to the assigning of shifts. Expanding seniority recognition to all shift working employees for the purposes of moving from one work location to another would solve on-going problems in a number of workplaces across the country. Indeed, introducing a fair, objective, and transparent process to this fundamental aspect of working conditions is, in the Union's opinion, entirely in the interests of both parties.

Rest Between Shifts

There are occasions when employees are required to work mandatory overtime. Examples of this include when employees escort detainees back to their country of origin (often referred to as international escorts), or when an arrest or seizure is made. In each of these cases there are situations where the nature of the work is such that an employee cannot end their shift as scheduled. For example, if a large seizure is made it can take several hours to conduct the investigation and process both paperwork and the individuals involved. It is not uncommon for an employee to make a seizure or an arrest towards the end of his/her shift and then be required to work many hours of overtime as a result.

The Union's proposal would ensure that employees that must work mandatory overtime would get the rest necessary between shifts and suffer no loss in compensation as a result. In light of the provisions provided for under 25.14(a), the parties have already recognized that protections are necessary to ensure that employees get rest between shifts. The Union's proposal would ensure that, regardless of the circumstances, the Employer must make every effort to ensure that employees get a minimum of eight hours rest, and that no employee suffers economic consequences for taking the time necessary to rest before the next shift. Given the nature of the duties performed by employees in the bargaining unit, the Union submits that a protection of this nature is doubly important and is in the interests not only of the employee, but also those of the Employer and the broader Canadian public.

Day Work

With respect to day workers, the Union is proposing to modify 25.12 so that day workers might have the same protections with respect to changes in assigned work hours as those afforded shift workers under the parties' current agreement. The Union submits that there is no reason as to why a double-standard should exist in the parties' collective agreement, providing for shift workers to receive at least seven days-notice of a change in working hours or otherwise receive additional compensation, yet that same benefit does not apply to day workers.

Appendix B

Appendix B was negotiated and agreed upon for the first time in the 2007 round of negotiations. It stemmed from a recognition on the part of both parties that there was a need for clearer rules in the parties' collective agreement with respect to how negotiations for VSSA's are to be undertaken, and concerning how schedules are populated and vacant hours filled. It was negotiated in the wake of a number of tumultuous rounds of VSSA negotiations in CBSA worksites, Pearson International Airport in particular, where protracted negotiations and the Employer's implementation

of particularly harsh hours of work schedules led to bitter and rancorous labour relations between the parties at the local and regional levels.

While progress has undoubtedly been made over the years with respect to resolving on-going problems in the context of VSSA negotiations, some problems remain

VSSA talks are often difficult and contentious. In those environments where labour relations are already fractious, resolution to VSSA talks can be even more difficult to achieve. For example, in its decision concerning grievances filed with respect to the Employer's implementation of a "contract schedule" (i.e. a schedule based on 25.13 and 25.22 of the current agreement) at Pearson International Airport in 2007, the Board stated in the context of VSSA talks that:

> *(…) the climate of labour-management relations at Pearson in 2006 and early 2007 was such as to sometimes present a serious barrier to meaningful consultations on any subject. Where the issue between the parties involved a subject as charged as shift scheduling, the likelihood that there would be productive consultations under clause 25.22(b) in January 2007 was not great.* (PSLRB 569-02-34)

In order to help mitigate against fractious negotiations, the Union is proposing that a fundamental principle of negotiations – that they be carried out in good faith – be applied to VSSA talks. The principle of negotiating in good faith is enshrined in every labour code in every jurisdiction in Canada, including Section 106 of the Public Service Labour Relations Act. To quote Ontario Labour Relations Board Alternate Chair Diane Gee from a recent OLRB decision:

> *Thus, the jurisprudence has long and consistently held that one of the functions served by the duty to bargain in good faith and make every reasonable effort to make a collective agreement is to foster rational and informed discussion. The duty requires parties to engage in full and honest discussion and censures parties for withholding information that the party opposite requires in order to intelligently appraise a proposal*[20]*.*

[20] Association of Management, Administrative and Professional Crown Employees of Ontario v Ontario (Government Services), 2012 CanLii 3597.

While VSSA talks do not constitute collective bargaining as defined by the Act, they are a form of negotiation. The parties meet to discuss their respective interests in the context of scheduling – in the case of the Employer, its operational needs, and in the case of the Union, the need for fairness and work-life balance for affected union members. Common ground is rarely found immediately when these talks unfold, and contention is not uncommon. The existence of Appendix B is a testament to the fact that the parties recognize the potential for disagreement and contention.

The potential for disagreement and conflict is also inherent in collective bargaining. Indeed, it is largely for this reason that labour law across Canada requires unions and employers to bargain in good faith when negotiating collective agreements. The Union submits that the same principle should apply to VSSA talks. Article 1.01 of the collective agreement states that the purpose of the Agreement is to "maintain harmonious and mutually beneficial relationships". In light of the often-contentious nature of VSSA talks, the Union submits that the obligation to negotiate in good faith is in the interests of both parties and is an extension of the commitment contained in Article 1 of the collective agreement.

Summary

Scheduling continues to be the source of considerable discussion (and tension) between the parties. This discussion has taken place at the local, regional and national levels. Broadly speaking, the reason for these on-going discussions and tensions is that the employer has far too much discretion in terms of scheduling and hours of work assignment. Article 25.15 states that the "staffing, preparation, posting and administration of shift schedules is the responsibility of the Employer". This is not in dispute. The collective agreement also states that schedules subject to VSSA's must be "consistent with operational requirements as determined by the Employer". This too is not in dispute. What is lacking are clear parameters around what happens in the absence of a VSSA, and what happens when hours of work are assigned to certain VSSA workers and non-VSSA workers. What is also required is that employees' seniority rights be limited to the schedule that the employee works under, as this

limitation does not make sense considering the CBSA operational environment. Lastly, a good-faith obligation with respect to VSSA talks would be in the interests of both parties to mitigate labour-relations tensions in CBSA workplaces.

In light of this and the other arguments put forward in this brief, the Union respectfully requests that its proposals for Article 25 be incorporated into the Commission's recommendation.

ARTICLE 27
SHIFT AND WEEKEND PREMIUIMS

PSAC PROPOSAL

Amend as follows:

Excluded provisions

This Article does not apply to employees on day work, covered by clauses 25.06 to 25.12 inclusive.

27.01 Shift Premium

An employee working shifts, will receive a shift premium of two dollars **and fifty cents** ($2.**5**0~~0~~) per hours for all hours worked, including overtime hours, between 4:00 p.m. and 8:00 a.m. The shift premium will not be paid for hours worked between 8:00 a.m. and 4:00 p.m.

27.02 Weekend Premium

(a) An employee working shifts during a weekend will receive an additional premium of two dollars **and fifty cents** ($2.**5**0~~0~~) per hour for all hours worked, including overtime hours, on Saturday and/or Sunday.

(b) Where Saturday and Sunday are not recognized as the weekend at a mission abroad, the Employer may substitute two (2) other contiguous days to conform to local practice.

RATIONALE

Most employees in the FB bargaining unit work shifts, consequently, shift and weekend premiums are not an inconsequential compensation for workers in this bargaining unit. These workers have not seen an increase in shift premium since June 2002—over eighteen years. While wages have been adjusted over the same period, shift and weekend premiums have remained unchanged.

This has not been the case with other PSAC bargaining units. For example, the Operational Service (SV Group) in the core public administration received a 12.5%

increase to shift premium (from $2.00 to $2.25). Similarly, the Canadian Food Inspection Agency and Parks Canada replicated this increase in shift premium to $2.25. The Canada Revenue Agency shift and weekend premium is also $2.25 (Exhibit 44). In addition, federal public sector employers have agreed to a considerable increase in shift premium for other groups of workers it employs. For example, the PSAC bargaining unit for Scanner Operators at Parliamentary Protective Services, Operational workers and both editors and senior editors at the House of Commons, workers at the Senate of Canada and at the Museum of Science and Technology Corporation have all seen their shift and weekend premiums increase. Some of these increases were achieved via PSLRB arbitral awards. (Exhibit 45). Indeed, the two recent-most interest arbitration awards issued by the PSLRB provided an increase in shift premium to $2.40 an hour. In both of these cases the union members affected worked for the Parliamentary Protective Service, Parliament Hill's Service responsible for law enforcement at the House of Commons and the Senate.

What the Union is proposing is that shift, and weekend premiums be increased from $2.00 to $2.50 an hour for shift and weekend premiums. When taking into account the significant changes that have been made to the work that shift-working employees do in the FB bargaining unit, changes that have warranted significant (though ultimately insufficient) wage increases since 2007, and given the time that has elapsed since the last increase, the Union submits that its proposal is entirely reasonable. What's more the Treasury Board has agreed to a considerable increase in shift premium for another group of workers in its employ. The Union submits the same should be done for shift workers in the FB group. As wages and inflation increase, the relativity between the value of the shift/weekend premium and the hourly rates of pay also needs to be maintained through an upward adjustment to the premium. Otherwise the premium pay associated with shift work would not properly compensate employees for the hardship and inconvenience represented by this kind of work.

The Union submits that there is no cogent reason given these facts as to why workers in the FB group should not see an increase in shift and weekend premiums, particularly

given the precedent that has been set by both the Treasury Board and the PSLRB. Consequently, the Union respectfully requests that its proposal be included in the panel's recommendation.

ARTICLE 28

OVERTIME

PSAC PROPOSAL

28.03 Assignment of Overtime Work

(a) Subject to operational requirements, the Employer shall make every reasonable effort to avoid excessive overtime and to offer overtime work on an equitable basis among readily available qualified employees.

(b) **In order to ensure compliance with 28.03 (a), the Employer shall post a list of all employees in each work location, as well as a list of overtime opportunities. Such list of overtime opportunities shall be posted at least once a week. Overtime shall be offered on a rotational basis, beginning with the employee on the list that has been offered the least number of hours.**

28.04 Overtime Compensation on a workday

Subject to paragraph 28.02(a):

(c) an employee who is called back to work after the employee has completed his or her work for the day and has left his or her place of work, and returns to work shall be paid the greater of:

(i) compensation equivalent to three hours' pay at the applicable overtime rate of pay for each call-back to a maximum of eight (8) hours' compensation **at the applicable overtime rate** in an eight (8) hour period; such maximum shall include any reporting pay pursuant to paragraph (b) or its alternate provision~~;~~

28.07 Meals

a. An employee who works three (3) or more hours of overtime immediately before or immediately following the employee's scheduled hours of work shall be reimbursed his or her expenses for one meal in the amount of **twenty** ~~twelve~~ dollars ~~($12~~ **20**) except where free meals are provided.

b. When an employee works overtime continuously extending four (4) hours or more beyond the period provided in paragraph (a), the employee shall be reimbursed for one additional meal in the amount of

twenty ~~twelve~~ dollars ~~($12~~ **20)** for each additional four (4) hour period of overtime worked thereafter except where free meals are provided.

c. Reasonable time with pay, to be determined by the Employer, shall be allowed the employee in order that the employee may take a meal break either at or adjacent to the employee's place of work.

d. Meal allowances under this clause shall not apply to an employee who is in travel status, which entitles the employee to claim expenses for lodging and/or meals.

RATIONALE

There are several components to the Union's proposal for Article 28. First, the Union is proposing to modify 28.03 in order to ensure transparency with respect to overtime opportunities and assignment. Second, the Union is proposing that reporting pay reflect what the parties have agreed to for call-back situations. Third, the Union is proposing an increase in overtime meal allowance.

The Union's proposals for 28.03 are intended to ensure both transparency and consistency. There are CBSA workplaces where the Employer has refused to post a list of both overtime opportunities as well as overtime worked by employees, which in turn has led to disputes on occasion and allegations of inequitable distribution. The Union's proposal for 28.03 would rectify this. The proposal is modeled on the current practices in a number of workplaces across Canada, including Vancouver International Airport, Niagara Falls, Trudeau Airport in Montreal and Stanfield Airport in Halifax.

In rejecting this proposal in the past, the Employer has cited privacy concerns and the need for compliance with the Privacy Act. The Union submits that this is absurd, particularly when taking into account that what is being proposed is practiced in CBSA worksites across Canada, and when taking into account recent decisions from both the PSLRB and federal courts providing bargaining agents with access to members' home addresses and personal information (PSLRB 525-34-29). Surely if the Employer can be obligated to hand over employees' personal contact information to the Union, it can post a list of overtime opportunities and the amount of overtime worked by employees.

The changes proposed for 28.04 would resolve on-going issues with respect to compensation when employees are required to return to work. At present, the Union and the employer do not agree on the compensation to be provided when an employee reports. The employer has taken the position that such compensation is to be paid at straight-time, with an eight-hour cap, irrespective of the number of call-backs – this despite the fact that the clause refers to 'overtime rate'. Indeed, grievances have been filed in numerous locations over this issue (Exhibit 46). The Union's proposal would ensure clarity in the collective agreement, and that employees get paid appropriately.

Lastly, the Union is proposing an increase in overtime meal allowance. The allowance, which increased last round by a mere two dollars after zero increase for fifteen years, remains insufficient relative to the rising cost of a meal. Overtime meal allowance for shift workers have been increased several times via PSLRB interest arbitration for a number of PSAC groups over the last several years (Exhibit 47). What these arbitral awards point to is the ongoing necessity of assessment and consideration of the cost of a meal relative to the value of this allowance—the value must keep up with the cost. The Union submits that it is difficult, if not impossible, to find a restaurant that serves a healthy meal for no more than $12. To this point, Restaurants Canada's 2019 Food Service Facts stated that restaurant menu prices in Canada rose 4.2 percent in that year alone—the largest one-year increase since the introduction of the goods and services tax (GST) in 1991 (Exhibit 48). A significant increase in overtime meal allowance is well overdue, and the Union respectfully requests that the Commission include this recommendation in their report.

The proposals made with respect to Article 28 would ensure transparency, fairness, fix problems and provide for a much-needed overtime meal allowance increase. Therefore, the Union respectfully requests that the Commission include said proposals in its recommendation.

ARTICLE 29

STANDBY

29.01 The Employer shall make every reasonable effort to avoid putting employees on standby status.

29.02 Where the Employer requires an employee to be available on standby during off-duty hours, such employee **is entitled to be paid at his/her hourly rate of salary for one-third (1/3) of his/her stand-by time, but where such stand-by time is less than the number of hours in the employee's scheduled working day, the employee is entitled to three (3) hours pay at the hourly rate.** ~~shall be compensated at the rate of one-half (1/2) hour for each four (4) hour period or part thereof for which the employee has been designated as being on standby duty.~~

29.03

a. An employee designated by letter or by list for standby duty shall be available during his or her period of standby at a known telephone number and be available to return for duty as quickly as possible if called.

b. In designating employees for standby, the Employer will endeavour to provide for the equitable distribution of standby duties.

c. No standby payment shall be granted if an employee is unable to report for duty when required.

d. An employee on standby who is required to ~~report for~~ work ~~and reports~~ shall be compensated in accordance with paragraph 28.04(c) or 28.05(c), and is also eligible for reimbursement of transportation expenses in accordance with clause 28.08.

RATIONALE

With chronic understaffing increasingly an issue at so many CBSA worksites, standby is a practice that is on the rise at CBSA. It is a practice that is not popular with Union membership, in that it limits employees' freedom when away from the workplace. The compensation provided under the current agreement for standby is insufficient and substandard. To rectify these issues, the Union is proposing two solutions.

First, the Union is proposing that the employer make every reasonable effort to avoid assigning standby to Union members. While the Union recognizes that there are situations where it may be required, it is intrusive, and the employer should only assign standby when absolutely necessary.

Second, the Union is proposing to replicate compensation that is provided in the collective agreement covering officers at the Ontario Provincial Police. The Union submits that if the OPP can provide 1/3 time for its officers on standby, CBSA can do the same.

In light of these factors, the Union respectfully requests that the Commission recommend its proposals for Article 29.

ARTICLE 30
DESIGNATED PAID HOLIDAYS

30.01 Subject to clause 30.02, the following days shall be designated paid holidays for employees:

(a) New Year's Day;

(b) Good Friday;

(c) Easter Monday;

(d) the day fixed by proclamation of the Governor in Council for celebration of the Sovereign's birthday;

(e) National Indigenous Peoples Day

(f) ~~(e)~~ Canada Day;

(g) ~~(f)~~ Labour Day;

(h)~~(g)~~ the day fixed by proclamation of the Governor in Council as a general day of thanksgiving;

(i) ~~(h)~~ Remembrance Day;

(j) ~~(i)~~ Christmas Day;

(k) ~~(j)~~ Boxing Day;

(l) ~~(k)~~ **two (2)** ~~one~~ additional days in each year that, ~~in the opinion of the Employer~~, ~~is~~ **are** recognized to be a provincial or civic holiday in the area in which the employee is employed or, in any area where, ~~in the opinion of the Employer~~, no such additional ~~day is~~ **days are** recognized as a provincial or civic holiday, the **third Monday in February and the** first (1st) Monday in August;

(m) ~~(l)~~ one additional day when proclaimed by an Act of Parliament as a national holiday.

RATIONALE

With respect to Article 30, the Union is proposing additional designated paid holidays. The Union proposes to include an additional statutory holiday on June 21 of each year, National Indigenous Peoples Day at 30.01(e). June 21 is culturally significant as the summer solstice, and it is the day on which many Indigenous peoples and communities traditionally celebrate their heritage. Additionally, recognizing a National Indigenous

Peoples Day would fulfill recommendation #80 of the Truth and Reconciliation Commission's Call to Action report:

> 80. We call upon the federal government, in collaboration with Aboriginal peoples, to establish, as a statutory holiday, a National Day for Truth and Reconciliation to honour Survivors, their families, and communities, and ensure that public commemoration of the history and legacy of residential schools remains a vital component of the reconciliation process.[21]

Based on this report, two legislative developments, Bills C-5, An Act to amend the Bills of Exchange Act, the Interpretation Act and the Canada Labour Code (National Day for Truth and Reconciliation) and C-15, An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples,[22] both at first reading, recognize the TRC's Call to Action, with the former aiming "to fulfill the Truth and Reconciliation Commission's Call to Action #80 by creating a federal holiday called the National Day for Truth and Reconciliation which seeks to honour Survivors, their families, and communities, an ensure that public commemoration of the history and legacy of residential schools, and other atrocities committed against First Nations, Inuit and Metis people, remains a vital component of the reconciliation process." [23]

The Union considers the recognition of this day as a designated paid holiday in the Collective Agreement not only as an opportunity for the Employer to actively embrace the reconciliation process, but also to allow employees, institutions and communities to celebrate and honor the indigenous population and commemorate their shared history and culture.

The rationale behind the Union's proposal for Family Day is that most employees in the bargaining unit work in provinces where a designated paid Family Day holiday exists,

---

[21] Delivering on Truth and Reconciliation Commission Calls to Action - Commemoration: https://www.rcaanc-cirnac.gc.ca/eng/1524505403680/1557513866487 (Exhibit 49)
To enable communities to recognize and commemorate the legacy of residential schools on the proposed National Day for Truth and Reconciliation and to celebrate the unique heritage, diverse cultures and outstanding contributions of First Nations, Inuit and Métis peoples on National Indigenous Peoples Day, Budget 2019 announced $10 million over 2 years, starting in fiscal year 2019 to 2020, to support non-governmental and community organizations holding events in communities across Canada, through Canadian Heritage's Celebration and Commemoration Program.
[22] Bill C-15: https://parl.ca/DocumentViewer/en/43-2/bill/C-15/first-reading
[23] Bill C-5: https://parl.ca/DocumentViewer/en/43-1/bill/C-5/first-reading

but to which they are not currently entitled. Family Day, celebrated on the 3rd Monday of February, is a statutory holiday in five provinces: Alberta, British Colombia, New Brunswick, Ontario, and Saskatchewan. The third Monday in February is also a designated paid holiday in three other provinces: Prince Edward Island (Islander Day), Manitoba (Louis Riel Day) and Nova Scotia (Heritage Day); and, in one territory, Yukon (Heritage Day), while in Quebec January 2nd is a holiday for provincial and municipal workers. The practical impact on members of the bargaining unit is that schools, day cares and other services are not open that day forcing employees to scramble to make childcare arrangements, or in many cases are forced to take a day of leave. The Union's proposal would not only ensure that employees in the FB bargaining unit have access to a holiday that is already provided to millions of other Canadian workers, but at the same not require employees to take a day of annual leave on that same day due to their family responsibilities.

Law enforcement organizations surveyed in this brief in AB, BC, NB, ON, and SK have codified Family Day into their respective collective agreements. Similarly recognized is the designated paid holiday in February in MB, NS, and PEI. In addition to recognizing the 3rd Monday in February, Ontario-based Indigenous Police Services represented by the PSAC including, Nishnawbe-Aski Police Services (e.g., National Indigenous Day), Treaty Three Police Services, and the Anishinabek Police Service recognize a culturally significant designated paid holiday in June (Exhibit 50).

Considering these facts, the Union respectfully requests that its proposals for Article 30 be included in the panel's recommendation.

ARTICLE 32

TRAVELLING TIME

32.08 Travel-Status Leave

a) An employee who is required to travel outside his or her headquarters area on government business, as these expressions are defined by the Employer, and is away from his permanent residence for ~~forty (40)~~ **twenty (20)** nights during a fiscal year shall be granted ~~seven decimal five (7.5) hours of time~~ **a day** off with pay. The employee shall be credited ~~seven decimal five (7.5) hours~~ of additional ~~time~~ **day** off with pay for each additional twenty (20) nights that the employee is away from his or her permanent residence, to a maximum of ~~eighty (80)~~ **one hundred (100)** additional nights.

b) The maximum number of days off earned under this clause shall not exceed ~~five (5)~~ **six (6)** days in a fiscal year and shall accumulate as compensatory leave with pay.

c) This leave with pay is deemed to be compensatory leave and is subject to paragraphs 28.06(c) and (d).

d) The provisions of this clause do not apply when the employee travels in connection with courses, training sessions, professional conferences and seminars, unless the employee is required to attend by the Employer.

32.xx When an employee is unable to leave his or her workplace due to circumstances beyond his/her control, such employee shall be paid for all time spent at the workplace and all time spent travelling to his or her place of residence.

RATIONALE

It is common for employees in the FB bargaining unit to be required by the employer to travel. The vast majority of front-line employees are required to travel a significant period of time for their tri-annual control defence tactics recertification. Employees also usually have to travel for firearm recertification.

Undoubtedly the population within the bargaining unit that spends the most time in travel status are Inland Enforcement Officers, staff who as part of their duties are

required to perform escorted removals of detainees out of Canada and back to their countries of origin.

Like FB bargaining unit employees, PSAC members in the Technical Services bargaining unit spend a great deal of time in travel status. These include primarily TI's working for Measurement Canada. Yet while workers in the TC group are members of the same union, working for the same employer, and are required to travel just as is the case for workers in the FB group, the two bargaining units are provided different benefits with respect to travel leave benefits, in that TC's are superior.

In negotiations, the employer provided no cogent rationale as to why such a double standard should exist. The Union's proposal to rectify the disparity is simple: simply apply the same travel leave standards in effect for PSAC members in the FB group that are currently in effect for PSAC members in the TC group. (Exhibit 51)

Concerning the Union's proposal for 32.xx, there have been instances where members of the bargaining unit working at isolated ports have been unable to leave their port due to inclement weather, or other factors such as road closures. This has been especially true in ports located on the Prairies and in the Interior of British Columbia. Where this has happened, the employer has refused to compensate employees who were unable to leave their place of work. What the Union is proposing is that if an employee is unable to leave work at the end of his or her shift for reasons beyond their control, then said employee will be compensated for that time. The Union submits that this is a matter of fairness, as these situations are beyond the employee's control and the employee is at work because he or she is required to be there to perform duties on behalf of the employer.

The Union's proposals for Article 32 are both fair and reasonable, and in the case of 32.08, represents an exact replication of what the employer has already agreed to for other workers in its employ. In light of these facts, the Union respectfully requests that its proposals be included in the Commission's recommendations.

ARTICLE 34
VACATION LEAVE WITH PAY

PSAC PROPOSAL

Amend as follows:

34.02 For each calendar month in which an employee has earned at least seventy-five (75) hours' pay, the employee shall earn vacation leave credits at the rate of:

(a) ~~nine decimal three seven five (9.375) hours~~ **1 (¼) days** until the month in which the anniversary of the employee's ~~eighth (8th)~~ **fifth (5th)** year of service occurs;

(b) ~~twelve decimal five (12.5) hours~~ **1 (2/3)** days commencing with the month in which the employee's ~~eighth (8th)~~ **fifth (5th)** anniversary of service occurs;

~~(c) thirteen decimal seven five (13.75) hours commencing with the month in which the employee's sixteenth (16th) anniversary of service occurs;~~

~~(d) fourteen decimal four (14.4) hours commencing with the month in which the employee's seventeenth (17th) anniversary of service occurs;~~

(c) ~~fifteen decimal six two five (15.625) hours~~ **2 (1/12) days** commencing with the month in which the employee's ~~eighteenth (18th)~~ **tenth (10th)** anniversary of service occurs;

~~(f) sixteen decimal eight seven five (16.875) hours commencing with the month in which the employee's twenty-seventh (27th) anniversary of service occurs;~~

(e) ~~eighteen decimal seven five (18.75) hours~~ **2 (1/2) days** commencing with the month in which the employee's ~~twenty-eighth (28th)~~ **twenty-third (23rd)** anniversary of service occurs.

(f) **2 (2/3) days commencing with the month in which the employee's thirtieth (30th) anniversary of service occurs;**

(g) 2 (11/12) days commencing with the month in which the employee's thirty-fifth (35th) anniversary of service occurs.

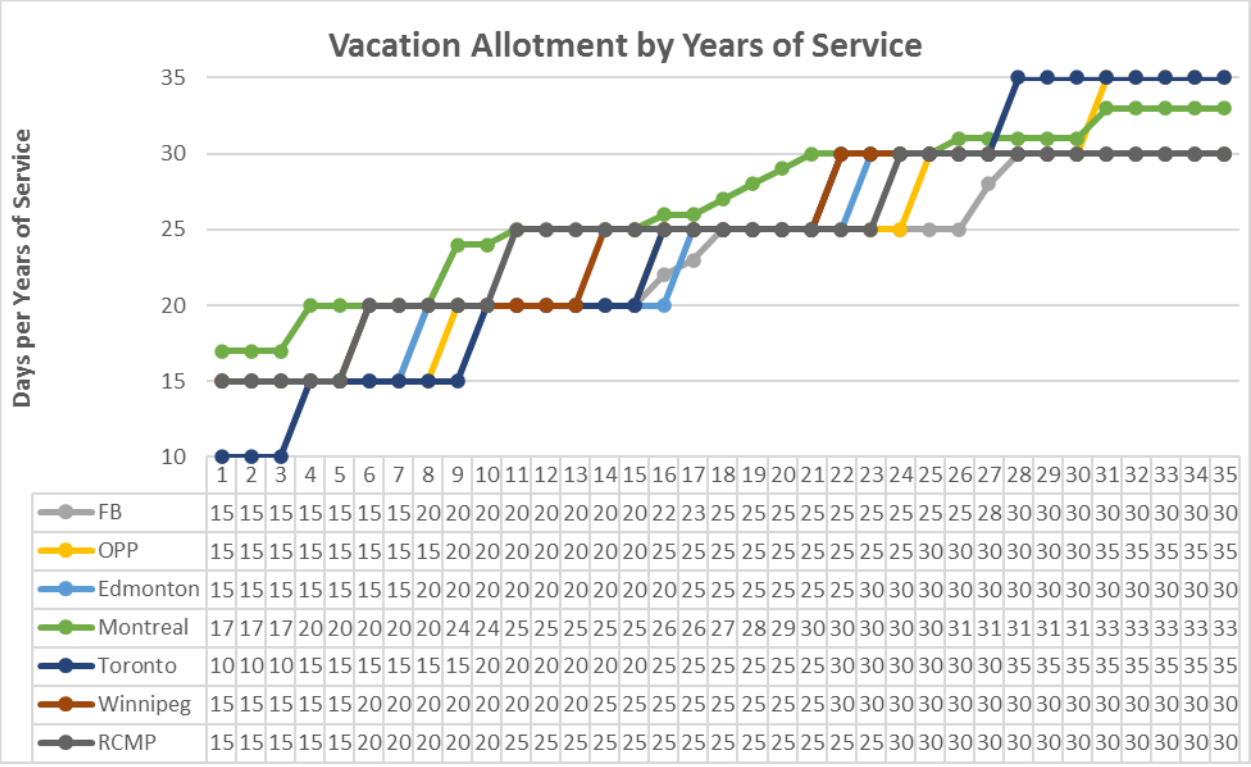
Carry-over and/or liquidation of vacation leave

a) Where, in any vacation year, an employee has not **used** ~~been granted~~ all of the vacation leave credited to him or her, the unused portion of his or her vacation leave up to a maximum of two hundred and sixty-two decimal five (262.5) hours credits shall be carried over into the following vacation year. All vacation leave credits in excess of two hundred and sixty-two decimal five (262.5) hours shall be automatically paid in cash at his or her rate of pay as calculated from the classification prescribed in his or her certificate of appointment of his or her substantive position on the last day of the vacation year.

RATIONALE

There are two key elements to the Union's proposals for Article 34. First, the Union is proposing to bring annual leave entitlements in line with those that are currently afforded workers at the Royal Canadian Mounted Police. As the chart below illustrates, the vacation leave entitlement for employees in the FB bargaining unit is inferior in comparison to those employed elsewhere in the broader law enforcement community.

Table 6: Vacation Allotment by Years of Service



	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35
FB	15	15	15	15	15	15	15	20	20	20	20	20	20	20	20	22	23	25	25	25	25	25	25	25	25	25	28	30	30	30	30	30	30	30	30
OPP	15	15	15	15	15	15	15	15	20	20	20	20	20	20	20	25	25	25	25	25	25	25	25	25	25	30	30	30	30	30	30	35	35	35	35
Edmonton	15	15	15	15	15	15	15	20	20	20	20	20	20	20	20	20	25	25	25	25	25	25	30	30	30	30	30	30	30	30	30	30	30	30	30
Montreal	17	17	17	20	20	20	20	20	24	24	25	25	25	25	25	26	26	27	28	29	30	30	30	30	30	31	31	31	31	31	33	33	33	33	33
Toronto	10	10	10	15	15	15	15	15	15	20	20	20	20	20	20	25	25	25	25	25	25	30	30	30	30	30	30	35	35	35	35	35	35	35	35
Winnipeg	15	15	15	15	15	20	20	20	20	20	20	20	20	25	25	25	25	25	25	25	25	30	30	30	30	30	30	30	30	30	30	30	30	30	30
RCMP	15	15	15	15	15	20	20	20	20	20	25	25	25	25	25	25	25	25	25	25	25	25	25	30	30	30	30	30	30	30	30	30	30	30	30

Data source: Law Enforcement Collective Agreements. (Exhibit 52)

As the above table (Table 6) illustrates, the overall current vacation entitlement for the FB Group falls below other law enforcement personnel elsewhere in the broader public service.[24] The PSAC proposal seeks to close that gap by matching the annual leave accrual system currently in place for Regular Members of the RCMP.

Table 7: RCMP Vacation Leave Relative to CBSA Vacation Leave

Years	Is the current entitlement equal or below RCMP?[25]	Net Days—current	Net Days—proposed
1-5	Equal	0	0
6-7	Below by five days	10	0
8-10	Equal	0	0
11-15	Below by five days	25	0
16	Below by 3 days	3	0
17	Below by 2 days	2	0
18-23	Equal	0	0
24-26	Below by 5 days	15	0
27	Below by 2 days	2	0
28	Equal	0	0
Total:		**57**	**0**

As indicated in the table above **(Table 7)**, a current employee of the FB bargaining unit would receive 11.4 weeks less (57 days less) of vacation leave over the course of his or her career compared to a regular employee of the RCMP. Again, the Union points out that employees working for the RCMP work under the same department and ministry as do employees in the FB bargaining unit.

As is the case with respect to employees at the RCMP, a significant majority of employees in the FB bargaining unit work shifts. As was indicated when speaking to shift work in the context of the Union's proposals for Article 25, the effects of shift work on the health of employees is well documented. Also as previously stated, the duties performed by a significant majority of workers in the bargaining unit require regular exposure to danger. The Union submits that these factors must be taken into account

[24] Sureté du Québec and Halifax Regional Municipality were both excluded from the table since their Vacation Allotment is on a Shift basis rather than on a day basis. 9hrs Shift for SQ and 12hrs shift for Halifax.
[25] RCMP – Salary & Benefits: https://www.rcmp-grc.gc.ca/en/salary-and-benefits

when considering annual leave quantum. Undoubtedly the government took this into account when instituting its vacation leave policy for workers at the RCMP. The Union is asking that the same be applied for employees in the FB bargaining unit.

In addition to the broader law enforcement community, the Union would also point out that union members at Canada Post also access a far superior vacation leave allotment compared to the current provisions for employees in the FB group. The difference in this example amounts of 70 days (14 weeks) when totaled over a career. (Exhibit 53)

Table 8: Canada Post Vacation Leave Relative to CBSA Vacation Leave

Years	Is the current entitlement equal or below Canada Post?	Net Days—current
1-7	Equal (3-weeks)	0
8-14	Equal (4-weeks)	0
15	Below by 5 days	5
16	Below by 3 days	3
17	Below by 2 days	2
18-21	Equal (5-weeks)	0
22-26	Below by 5 days	25
27	Below by 2 days	2
28	Equal (6-weeks)	0
29-35	Below by 5 days	35
Total:		**70**

There are hundreds of Border Services officers working exclusively at CBSA's postal operations across Canada. In all of these cases these employees work in buildings adjacent to or, in some cases such as at the Mississauga plant, in the *same building* as unionized postal workers. The Union submits that if Canada Post can agree to such vacation leave provisions, then surely CBSA can do the same for law enforcement personnel working in postal facilities. The Union submits that it's proposals at the 30-year and 35-year marks in years of service are modest relative to the Canada Post's vacation leave, and other major law enforcement organizations for that matter like the OPP and Toronto, as our proposal does not equal the Canada Post entitlement until 35-years of service.

In light of this fact, and in light of the fact that the federal government is already affording the same vacation leave allotment to other law enforcement personnel in its employ, indeed working under the same minister in the same department, the Union respectfully requests that the Commission include the Union's proposals for Article 34 in its recommendation.

ARTICLE 36 & ARTICLE 39
MEDICAL APPOINTMENT FOR PREGNANT EMPLOYEES
&
MATERNITY-RELATED REASSIGNMENT OR LEAVE

PSAC PROPOSALS

ARTICLE 36
MEDICAL APPOINTMENT FOR PREGNANT EMPLOYEES

~~36.02 Where a series of continuing appointments is necessary for the treatment of a particular condition relating to the pregnancy, absences shall be charged to sick leave.~~

ARTICLE 39
MATERNITY-RELATED REASSIGNMENT OR LEAVE

Amend as follows:

39.01 An employee who is pregnant or nursing may, during the period from the beginning of pregnancy to the end of the twenty-fourth (24^{th}) week following the birth, request that the Employer modify her job functions or reassign her to another job if, by reason of the pregnancy or nursing, continuing any of her current functions may pose a risk to her health or the health of the foetus or child. On being informed of the cessation, the Employer, with the written consent of the employee, shall notify the appropriate workplace committee or the health and safety representative.

39.02 An employee's request under clause 39.01 must be accompanied or followed as soon as possible by a medical certificate indicating the expected duration of the potential risk and the activities or conditions to be avoided in order to eliminate the risk. ~~Depending on the particular circumstances of the request, the Employer may obtain an independent medical opinion.~~

39.03 An employee who has made a request under clause 39.01 is entitled to continue in her current job while the Employer examines her request but, if the risk posed by continuing any of her job functions so requires, she is entitled to be immediately assigned alternative duties until such time as the Employer:

(a) modifies her job functions or reassigns her;

or

(b) informs her in writing that it is not reasonably practicable to modify her job functions or reassign her.

39.04 Where reasonably practicable, the Employer shall modify the employee's job functions or reassign her.

39.05 Where the Employer concludes that a modification of job functions or a reassignment that would avoid the activities or conditions indicated in the medical certificate is not reasonably practicable, the Employer shall so inform the employee in writing and shall grant leave of absence with~~out~~ pay to the employee for the duration of the risk as indicated in the medical certificate. However, such leave shall end no later than twenty-four (24) weeks after the birth.

39.06 An employee whose job functions have been modified, who has been reassigned or who is on leave of absence shall give at least two (2) weeks' notice in writing to the Employer of any change in duration of the risk or the inability as indicated in the medical certificate unless there is a valid reason why that notice cannot be given. Such notice must be accompanied by a new medical certificate.

RATIONALE

The Union is making effectively three proposals with respect to pregnant and/or nursing employees.

First, the Union is proposing modifications to Article 39. The current FB collective agreement requires the Employer to, where possible, modify the job duties of or reassign pregnant and nursing workers if they cannot safely perform their regular work. However, the article only provides for leave *without* pay if a reassignment is "not reasonably practicable". Many workers in Canada are covered by laws or collective agreements which provide pregnant and nursing employees leave with pay if no reassignment is possible. Federal public service workers deserve no less.

The Union believes it is possible in most cases for the Employer to find safe alternative work for members of the FB bargaining unit and that no employee should be forced onto leave without pay when requiring an accommodation of this nature.

Indeed, a provision to place an employee on leave with pay if the Employer cannot find alternative work would have the effect of encouraging the Employer to find alternative duties that can be safely performed by the pregnant or nursing worker.

Maternity-related paid leave for pregnant or nursing workers was first negotiated by the PSAC for members of the former Table 4 – Correctional Officers (CX) in November 2000:

> ***45.07*** *Notwithstanding 45.05, for an officer working in an institution where she is in direct and regular contact with offenders, if the Employer concludes that a modification of job functions or a reassignment that would avoid the activities or conditions indicated in the medical certificate is not reasonably practicable, the Employer shall so inform the officer in writing and shall grant leave of absence with pay to the officer for the duration of the risk as indicated in the medical certificate. However, such leave shall end no later than at the time the officer proceeds on Maternity Leave Without Pay or the termination date of the pregnancy, whichever comes first.*

This language was necessary for Correctional Officers, as there had been unfortunate incidents in the past that had resulted in children being stillborn or born with permanent disabilities due to airborne infections caught while working in the institutions.

While reassignment was possible for some employees in what is now the CX bargaining unit, the Employer realized that for those workers who could not be reassigned (as job modification for Correctional Officers is not really an option) leave with pay was the only viable alternative. The minimal cost to the Employer would be offset by the lives it would save.

This is no less important to the FB bargaining unit. Most FB employees' workplaces can pose risks to the pregnant worker, the fetus, or to the breast milk of a nursing

mother. In their day to day work, most FB employees are exposed to elevated levels of danger, stress and injury and work under constant physical and psychological threat. While it is true that reassignment can, in many cases, be a viable option, it is not always possible.

The concept of having paid leave when a worker cannot be accommodated via job modification or reassignment exists in only one provincial jurisdiction: Québec's *For a Safe Maternity Program,* which grew out of protections contained in the *Act Respecting Occupational Health and Safety* and the *Act Respecting Industrial Accidents and Occupational Diseases.*

However, a provision in section 132.5 of the *Canada Labour Code, Part II, Occupational Health and Safety,* also provides for leave with pay for the period the employee has informed the employer that she requires a job modification or reassignment and the employer is seeking to make this accommodation. Section 132.5 states:

> "*The employee, whether or not she has been reassigned to another job, is deemed to continue to hold the job that she held at the time she ceased to perform her job functions and shall continue to receive the wages and benefits that are attached to that job for the period during which she does not perform the job*."

Aware of the Québec and federal provisions, and building upon our achievements at the former Table 4, Maternity-Related Reassignment or Leave has been incorporated into many PSAC collective agreements. The Union is seeking to extend this provision to any member who cannot have her job made safe or be reassigned.

There are a number of reasons for this:

* The duty to accommodate pregnant or nursing workers should not result in them having to shoulder the financial burden of taking leave without pay if their job cannot be made safe, or if they cannot be reassigned. It is the Employer's duty to provide a safe work environment, as established through health and safety and

human rights/no harassment jurisprudence. It would stand to reason, therefore, that if this safe work environment cannot be provided by the Employer, then the Employer should pay for the employee's period of leave.

* If the Employer takes the time and makes a genuine attempt to modify the job of a pregnant or nursing member, and/or makes a genuine attempt at reassigning the member to a safe job, then the actual costs of sending members on leave with pay should be minimal. It is in the Employer's best interests to follow the steps outlined in the collective agreement, and try to accommodate the employee, as the result will be fewer members being sent on leave with pay.

* It could be only a matter of time before a grievance or human rights complaint is filed on the issue of being on leave without pay, claiming it to be discrimination based on sex. There is also the possibility of a member pursuing legal action if her child is born with problems due to being exposed to a toxin/danger during pregnancy. The employer could avoid these problems by granting leave <u>with</u> pay in 43.05.

The Union's proposal, to incorporate the intent of section 132 of the *Canada Labour Code* Part II, as well as to provide leave with pay for members whose jobs cannot be made safe or reassigned, has the same objective: to enshrine protections for employees in the collective agreement. This is a health and safety and human rights issue that merits inclusion in our collective agreements.

The Union is also proposing changes to Article 36. Clause 36.01 states:

> *36.01 Up to three decimal seven five (3.75) hours of reasonable time off with pay will be granted to pregnant employees for the purpose of attending routine medical appointments.*

However, 36.02 effectively negates 36.01 for those who have recurring issues that require additional medical visits for treatment will be docked sick leave for such visits.

The Union submits that the language contained in 36.01 should apply to all pregnant employees, and not effectively exclude those employees who require additional treatment. The Union submits that the distinction created by the current language is patently unfair.

In light of these facts, the Union respectfully requests that its proposal for maternity-reassignment and Article 36 be included in the Commission's recommendation.

ARTICLE 37
INJURY-ON-DUTY LEAVE

PSAC PROPOSAL

Amend as follows:

37.01 An employee shall be granted injury-on-duty leave with pay ~~for such period as may be reasonably determined by the Employer~~ when a claim has been made pursuant to the *Government Employees Compensation Act* and a Workers' Compensation authority has notified the Employer that it has certified that the employee is unable to work because of:

(a) personal injury accidentally received in the performance of his or her duties and not caused by the employee's willful misconduct,

or

(b) an industrial illness or a disease arising out of and in the course of the employee's employment,

if the employee agrees to remit to the Receiver General for Canada any amount received by him or her in compensation for loss of pay resulting from or in respect of such injury, illness or disease, provided, however, that such amount does not stem from a personal disability policy for which the employee or the employee's agent has paid the premium.

RATIONALE

The parties' current collective agreement states that employees will be granted injury-on-duty leave with pay "for such reasonable period as may be determined by the Employer" when a claim has been approved by the appropriate workers' compensation board. What this language suggests is that, irrespective of the period of time that the workers' compensation board has determined a worker needs leave to recuperate from a work related injury; it is at the Employer's discretion as to how much leave an employee is to be granted. The Union is proposing to amend the language so that an employee that is hurt at work is granted leave for the period of time that the workers' compensation board deems appropriate.

Under the current language, although the provincial/territorial workers' compensation board decides on the period of recovery, the Employer can unilaterally decide to end the benefits provided by injury-on-duty leave. In other words, the employee is switched to 'direct WCB payments' and receives the benefits provided by the provincial/territorial workers' compensation regime. The result is that an employee goes from receiving 100 percent of his/her wage while on injury-on-duty-leave to receiving anywhere from 75 percent to 90 percent of net income, depending on the province or territory[26].

The current language is both unfair and unreasonable, causing hardship for the members, for a variety of reasons:

1. Employees are treated differently since practices can vary dramatically with regard to injury-on-duty leave decisions in different workplaces, regions or province. There is no single, consistent standard of what is a 'reasonable period' for injury-on-duty leave.

2. The Employer's decision to move an employee to direct WCB payments cannot be challenged or appealed, no matter how unreasonable the decision may appear to be.

3. The Employer's decision can be influenced by the relationship with the individual involved in the accident. It is because of Employer abuses and other problems stemming from unfettered employer discretion in the context of workplace injury that workers' compensation boards were created to begin with.

4. The nature of the accident or illness can also be a factor in the Employer's decision to move members to direct WCB payments. Members suffering from a repetitive strain injury are often removed from injury-on-duty leave and placed on direct benefits fairly quickly.

[26] The exception is Yukon Territory, where the benefit is based on 75% of gross earnings.

5. The practices in place for managing the agency's budget are often a problem. Regular wages that are paid under the current injury-on-duty leave provisions are usually drawn from the agency budget. Direct workers' compensation payments are usually drawn from a central budget within Human Resources.

This can put pressure on the agency to switch the injured employee as quickly as possible to direct WCB payments in order to free up the salary money and replace the injured member with another 'fit' worker. When trying to accommodate an injured member with modified duties or a gradual return to work program, this type of situation often becomes a barrier.

6. There is a financial hardship to the member. Not only is s/he living on a reduced salary while on direct WCB payments, but upon his/her return to work, s/he is responsible for repaying the Employer for their portions of Superannuation, Public Service Health Care Plan, Supplemental Death Benefit, and Disability Insurance.

If employees are off for periods of ten days or more, they also lose out on the accumulation of sick and annual leave credits. And periods of leave without pay are not counted for pay revision, pay increases, increment dates, and continuous employment purposes, thereby creating long-term cost implications for the member.

The proposed amendment would ensure that the period of time called for by a legally sanctioned neutral third party for an employee to heal from workplace injury shall be adhered to.

The problems described above have been present for quite some time, and this round of bargaining is not the first time the Union has attempted to rectify them. It is significant that after having presented its case to a Conciliation Board with the TC Group in 2004, the Board agreed with the Union that the Employer's discretion over the period of injury-

on-duty leave should be removed from the collective agreement. The Board recommended that the first part of clause 41.01 of the TC collective agreement read:

> *41.01 An employee shall be granted injury-on-duty leave with pay for the period of time that a Workers Compensation authority has certified that the employee is unable to work …*

Federally, PSAC has negotiated language ensuring full pay and benefits to all injured or ill workers for the complete period approved by the provincial or territorial workers' compensation board. Similarly, the PSAC has recently negotiated language in a number of collective agreements with other federal employers such as the House of Commons, the Senate of Canada, the Library of Parliament, Parliamentary Protective, International Development Research Centre and others that does not give the Employer discretion to determine the term of injury-on-duty leave, but instead links it to the Worker's Compensation Authority claim decision. (Exhibit 54)

In light of these factors, the Union respectfully requests that the Commission include its proposals for Article 37 in its recommendation.

ARTICLE 43

LEAVE WITH PAY FOR FAMILY-RELATED RESPONSIBILITIES

PSAC PROPOSAL

Amended December 1, 2020:

43.02 The total leave with pay which may be granted under this article shall not exceed ~~thirty-seven decimal five (37.5) hours~~ **six (6) days** in a fiscal year. **Such leave may be taken as single days or as a fraction of a day.**

43.03 Subject to clause 43.02, the Employer shall grant the employee leave with pay under the following circumstances:

a. to take a family member for medical or dental appointments, or for appointments with school authorities or adoption agencies, if the supervisor was notified of the appointment as far in advance as possible;
b. to provide for the immediate and temporary care of a sick member of the employee's family and to provide the employee with time to make alternative care arrangements where the illness is of a longer duration;
c. to provide for the immediate and temporary care of an elderly member of the employee's family;
d. for needs directly related to the birth or the adoption of the employee's child;
e. to attend school functions, if the supervisor was notified of the functions as far in advance as possible;
f. to provide for the employee's child in the case of an unforeseeable closure of the school or daycare facility;
g. ~~seven decimal five (7.5) hours out of the thirty-seven decimal five (37.5) hours stipulated in clause 43.02 above may be used~~ to attend an appointment with a legal or paralegal representative for non-employment related matters, or with a financial or other professional representative, if the supervisor was notified of the appointment as far in advance as possible.

43.04 Where, in respect of any period of compensatory leave, an employee is granted leave with pay for illness in the family under paragraph 43.03(b) above, on production of a medical certificate, the period of compensatory leave so displaced shall either be added to the compensatory leave period, if requested by the employee and approved by the Employer, or reinstated for use at a later date.

RATIONALE

The Union is also seeking to increase the amount of family-related responsibility leave available to employees to 6 days annually from 37.5 hours and introduce the flexibility to take whole days or fractions of days.

The pressure on workers to care for family while juggling full-time jobs and other personal responsibilities has increased in recent years and the current quantum is insufficient to meet the needs of employees. Bargaining demands from our membership consistently identify improvements to family related responsibility leave provisions as a high priority. Moreover, employees at the Canada Revenue Agency and CSIS, also PSAC members, have 6 or more days per year of paid family-relative responsibility leave available to them. This is one day more per year, or 20 percent more hours of leave than are available to PSAC members in the FB group. (Exhibit 55) We respectfully ask the Commission to recommend an increase in the amount of family-related leave available to FB members, to bring the quantum in line with FB former co-workers at the CRA (the FB and CRA group both formed the same bargaining unit under CRA for many years).

Next, with respect to the proposed strikethrough at 43.03(g), this one-day limit is arbitrary and has a negative and disproportionate impact on employees addressing personal legal, financial, or other professional matters. The Union believes that there is no justification for Treasury Board to provide family related responsibility leave provisions to employees in the core public administration that are inferior to those enjoyed by employees of the CRA. We respectfully request that the Commission recommend our proposal.

ARTICLE 52 & ARTICLE 33
LEAVE WITH OR WITHOUT PAY FOR OTHER REASONS
&
LEAVE - GENERAL

PSAC PROPOSAL

Amend as follows:

ARTICLE 52
LEAVE WITH OR WITHOUT PAY FOR OTHER REASONS

52.02 Personal leave

Subject to operational requirements as determined by the Employer and with an advance notice of at least five (5) working days, the employee shall be granted, in each fiscal year, ~~fifteen (15) hours of~~ **two (2) days of** leave with pay for reasons of a personal nature. This leave can be taken in ~~periods of seven decimal five (7.5) hours or three decimal seven five (3.75) hours~~ **single days or as a fraction of a day**.

The leave will be scheduled at times convenient to both the employee and the Employer. Nevertheless, the Employer shall make every reasonable effort to grant the leaves at such times as the employee may request.

52.xx Leave with Income Averaging

a) The Employer's Leave with Income Averaging Directive, as constituted on November 30st, 2018, shall form part of this Agreement.

b) The Employer shall not unreasonably deny requests for Leave with Income Averaging.

c) When excessive requests have been made for Leave with Income Averaging, years of service shall be the determining factor for the granting of such leave.

ARTICLE 33
LEAVE – GENERAL

Amend as follows:

33.01

(a) When an employee becomes subject to this Agreement, his or her earned daily leave credits shall be converted into hours. When an employee ceases to be subject to this Agreement, his or her earned hourly leave credits shall be reconverted into days, with one day being equal to seven decimal five (7.5) hours.

~~(b) Earned leave credits or other leave entitlements shall be equal to seven decimal five (7.5) hours per day.~~

(b) When leave is granted, it will be granted on an hourly basis and the number of hours debited for each day of leave shall be equal to the number of hours of work scheduled for the employee for the day in question.

(c) Notwithstanding the above, in Article 46, Bereavement Leave with Pay, a "day" will mean a calendar day.

33.02 Except as otherwise specified in this Agreement:

(a) where leave without pay for a period in excess of three (3) months is granted to an employee for reasons other than illness, **military leave or leave for care of the family,** the total period of leave granted shall be deducted from "continuous employment" for the purpose of calculating severance pay and from "service" for the purpose of calculating vacation leave;

(b) time spent on such leave which is for a period of more than three (3) months shall not be counted for pay increment purposes.

RATIONALE

The Union's proposals for Articles 33 and 52 are designed to ensure consistency in terms of the application of certain practices across the bargaining unit, and to ensure that in the case of military service, employees do not suffer negative consequences for having to take leave that could potentially be the result of circumstances beyond their

control. Also, in the case of Article 52, the Union is seeking to achieve parity with other collective agreements in the federal public service.

With respect to the Union's proposal for 33.02, it would ensure that employees that are required to take leave for military service or to care for their families do not suffer a break in continuous employment. The nature of the work at CBSA is such that there are a considerable number of reservists in the bargaining unit. Article 32 of the current agreement states that employees who take leave without pay in excess of 3 months shall have the total period of leave granted deducted from continuous employment, except when such leave is taken for reasons related to illness. There have been situations in the past when reservists in the bargaining unit have been called up for military duty and dispatched overseas for periods of a year or more, and as a result have had this period of time deducted from their continuous service. The Union submits that employees who are called up by the federal government to perform duties and serve the Crown elsewhere outside of the core public service should not suffer a loss in continuous service a result. The Union's proposal would ensure that does not happen. The same is true with respect to leave for care of family which, like Maternity and Parental Leaves, is a leave that is provided for and protected under federal legislation. Employees do not suffer a break in continuous employment when on maternity or parental leave. The Union submits that the same should apply for Military and Care of Family leaves.

The Union is making two proposals for Article 52.

With respect to Leave with Income Averaging (LWIA), the Union's proposal is designed to achieve effectively three objectives. First, LWIA is a directive that has been in place in the federal public service for over two decades. However, it is a directive and therefore subject to change without the PSAC's explicit consent. Second, access to the leave provided under the directive is at management's discretion, which has often meant that the leave is either denied at CBSA without explanation or is not granted in a

fair or reasonable manner when there are more requests for the leave than can be accommodated.

The Union's proposal for LWIA addresses all of these issues in that it would make the directive part of the collective agreement, while at the same time ensure that access to the leave is not unreasonably denied, and that years of service be applied in the event that there are more requests than are operationally feasible.

The employer has provided no cogent rationale as to why the Union's proposal is somehow unworkable. It is after all based on the employer's own directive, and provides the employer the prerogative to deny requests for LWIA based on reasonable grounds.
Lastly with respect to Article 52, the Union is proposing to bring the quantum for Personal Leave in line with what the Union has negotiated with other FPSLRA employers – namely Canada Revenue Agency (CRA) and the Canadian Security and Intelligence Service (CSIS). In the case of CRA, the Union reminds the panel that for a considerable period of time employees in the FB bargaining unit were in the same bargaining unit as employees at the CRA, when both worked for the Canada Customs and Revenue Agency (CCRA). Since that time the CRA has agreed to 2 personal leave days for its employees, recognizing the need for further opportunities for employees to access work-life-balance. CSIS – another federal institution for safeguarding the safety and security of Canadian- has also negotiated such a provision with the PSAC. (Exhibit 56) As pointed out earlier in this brief, work-life balance is a critical issue for the Union in this round of negotiations. The Union's proposals concerning LWIA and Personal Leave are integral to the Union addressing these objectives.

In light of these facts, the Union respectfully requests that its proposals for Articles 33 and 52 be included in the Commission's recommendations.

ARTICLE 58
WASH UP TIME

PSAC PROPOSAL

Amend as follows:

ARTICLE 58
WASH UP TIME

Replace current language with:

58.01

a) Uniformed officers shall be provided a minimum of fifteen (15) minutes at the beginning and fifteen (15) minutes at the end of each shift for tooling up and tooling down. Time spent tooling up and tooling down shall form part of an employee's shift.

b) In addition to a) above, where there is a need due to the nature of the work, wash-up time up will be permitted before the end of the working day.

RATIONALE

The Union's proposals for Article 58 are designed to ensure that employees are not required to spend time engaging in activities associated with their employment without receiving compensation for said time.

With respect to a), a significant majority of employees in the bargaining unit are required to don 'tools' for the performance of their duties. For example, a Border Services Officer working at a land port of entry is required to don duty belt, boots, baton, vest, firearm (loaded with two extra magazines), handcuffs and OC spray at all times when on duty. Also, it is CBSA policy that every officer secure and store his or her firearm on site at the end of the employee's shift. At present, the CBSA's expectation is that the time spent 'tooling up' – meaning donning all of the tools and equipment required for when an officer is on duty – and 'tooling down' – meaning time spent removing tolls and equipment at the end of shift - is on the employee's time.

The Union submits that this is unfair. If an employee is required to put on these items and have them ready for the performance of their duties – including items such as firearms that by employer policy cannot leave the port – and then remove and store them at the end of their shift, then such time should be compensated as time worked. Given that the employer has taken the position that this is not the case under the parties' current agreement, then the Union's position is that it should be made clear in the new agreement that it is indeed time that forms part of an employee's regular shift. To suggest otherwise – as the employer currently does – is to suggest that employees are required to perform certain duties for the employer without getting compensated. This should be rectified in this round of negotiations.

For b) the Union is again proposing to modify language in the parties' agreement that currently provides employer discretion in an area where all too often the CBSA is neither fair nor reasonable in the application of that discretion.

The duties performed by front-line officers in this bargaining unit are such that wash-up time is often warranted. Border Services Officers are often required to search cars, trucks, commercial vehicles, containers and, in the case of Border Services Officers working in Marine, everything from ballast tanks to cargo holds and everything in between of ships offshore. To put it bluntly, such activity requires wash up time when completed.

The problem that has arisen is that the employer has on many occasions denied wash up time, even when the Union and employee have demonstrated that it is warranted. What permits the employer to do so is the language in the current agreement which states that "(w)here the Employer determines that, due to the nature of the work….". To rectify this problem, the Union is proposing to modify the language so that there is recourse when an employee or the Union feel that there is a need for wash up time and management does not grant the time necessary for an employee to get washed up. What happens now is that that there have been occasions where an employee washes

up on his or her own time when management does not grant adequate time. This would no longer happen under the Union's proposal.

In short, the Union's proposals for Article 53 would ensure that employees are compensated for time spent engaged in activities that stem from duties they are required to perform as part of their employment. It is a basic, fundamental principle in the labour relations world and in employment law generally that an employee should be compensated for time worked. The Union's proposals are entirely consistent with this principle. In light of this fact, and in light of the current problems outlines here, the Union respectfully requests that the Commission include its proposals for Article 53 in its award.

ARTICLE 62

PAY ADMINISTRATION

62.X1

a. An employee who is required to act at a higher level shall receive an increment at the higher level after having reached fifty-two (52) weeks of cumulative service at the same level.

b. For the purpose of defining when employee will be entitled to go to the next salary increment of the acting position, "cumulative" means all periods of acting at the same level.

RATIONALE

It is commonplace at CBSA for employees to be required to take on acting assignments. However, there is a loophole in the current agreement, in that it is not clearly set out under the current contract that employees' time spent in acting assignments count towards an increment in that position. There are employees who act for a considerable amount of time in many cases, and consequently the Union is proposing language that would make sure that all time spent in an acting position counts towards an increment in that position. The proposal here is virtually identical to what the PSAC negotiated with the Canada Revenue Agency in 2016 (and located in the pay notes of the current contract), the CRA being an employer where acting assignments are widespread. (Exhibit 57) As was previously referenced in this brief, employees in the Border Services group and employees in the PSAC bargaining unit at CRA were once in the same bargaining unit working for the same employer. Thus, the Union sees no reason as to why this arrangement should be in place for PSAC members working at CRA and not for those working at CBSA.

Given that what the Union is proposing for 62.x1 is consistent with what has been negotiated with elsewhere in the federal public administration, the Union respectfully requests that its proposals for Article 62 be included in the Commission's recommendation.

NEW ARTICLE

PROTECTIONS AGAINST CONTRACTING OUT

PSAC PROPOSAL

NEW XX.01 There shall be no contracting out or privatisation of bargaining unit work, except by explicit mutual agreement in writing between the Union and the Employer.

NEW XX.02 The employer shall bring all currently sub-contracted bargaining unit work back into the bargaining unit. The parties shall meet within ninety (90) days of ratification to ensure full compliance with this Article.

RATIONALE

As previously stated earlier in this brief, members of the FB bargaining unit perform duties that are vital to the safety and security of Canadians. Officers in this bargaining unit are trained professionals who undergo rigorous recertification processes both with respect to control and defence tactics training and the handling of duty firearms. The government on a great many occasions – and the CBSA – have repeatedly acknowledged this fact. For example, on July 12, 2019, Minister Bill Blair stated:

> "CBSA recruits undergo rigorous, state-of-the-art training, and today's officer induction ceremony marks a significant milestone in the lives of these future officers as they advance to serving on the frontline. CBSA officers are key to ensuring the safety and security of Canadians, using their expertise to provide service excellence to all those who cross the border."[27]

Despite this fact, CBSA has engaged in practices that undermine this important work by contracting out duties that have traditionally been done by members of the FB group, Inland Enforcement officers in particular. A review of the key activities, effort, and responsibility sections of the Inland Enforcement Officer work descriptions repeatedly describes and details detention, restraint, and escort duties and requirements. Similarly,

[27] Minister Blair and Parliamentary Secretary Schiefke attend Induction Ceremony for Border Services Officer Trainees at CBSA College in Rigaud, Quebec. https://www.canada.ca/en/border-services-

Border Services Officers work description details responsibilities including detention or arrest, imposing conditions on individuals for entry, removal, and refusal (Exhibits 58 & 59). The importance of reviewing the work descriptions here is to make clear to the Commission that it is FB bargaining unit work that is being contracted out.

Taking a snapshot view of CBSA's increasingly expansive contracting out portfolio dating back to approximately 2018, BuyandSell.gc.ca details procurement data—in which CBSA is the end user of commercial security-related service—and contract values with service suppliers that in multiple instances exceed millions of dollars.[28] For example, in an Ontario contract valued over fifteen million dollars, a 2018 Request for Proposal describes in nature of requirements of the work CBSA contracted out:

> 1.2.1 The Canada Border Services Agency (CBSA) requires guard services to provide the following in the Greater Toronto (GTA) Area Region:
>
> a. Maintain custody and control of all clients and their luggage and personal effects (for example, money, jewellery), and keep clients safe and secure through regular observation, monitoring, engagement, and intervention, when and where necessary;
>
> b. Transport clients and their luggage and personal effects to and from various locations within the region and across Canada; and,
>
> c. Confirm the departure from Canada of clients subject to a removal order or who have withdrawn an application to enter Canada and are issued an allowed to leave document under the IRPA. This includes clients who are under a detention order, clients who are released into the community and present themselves independently for removal, as well as clients held within the airport awaiting their flight to their country of origin.[29]

These practices on the part of the employer have very real repercussions.

---

agency/news/2019/07/minister-blair-and-parliamentary-secretary-schiefke-attend-induction-ceremony-for-border-services-officer-trainees-at-cbsa-college-in-rigaud-quebec.html

[28] K105A: Commercial Security Guard and Related Services: https://buyandsell.gc.ca/procurement-data/search/site/K105A%3A%20Commercial%20Security%20Guard%20and%20Related%20Services?page=1&retain-filters=1&rows=10&solrsort=ds_created%20desc&f%5B0%5D=sm_facet_department%3A47&f%5B1%5D=sm_facet_department%3Aend_user%7C47

[29] Request for Proposal (2018 – Ontario). End user of services: CBSA: https://buyandsell.gc.ca/cds/public/2018/11/09/2c6fe21c3c7c83d83dd6ebf92ecf90ac/ABES.PROD.PW_TOR.B014.E7644.EBSU000.PDF

For example, in 2014 an individual committed suicide while being held in the immigration detention centre at Vancouver International Airport (Exhibit 60). The event took place while the individual was under the supervision of contracted out workers employed by the Genesis Security Agency. The Union asserted then, and has been asserting ever since, that this tragedy could have been avoided should the CBSA have had trained officers on-hand supervising the individual in question. The Union submits that it is only a matter of time before other such events occur should the employer not halt its practice of contracting out this work.

Indeed, the Findings of the Coroner's Inquest stemming from the incident at Vancouver International Airport were unambiguous:

> *Pursuant to Section 38 of the Coroners Act, the following recommendations are forwarded to the Chief Coroner of the Province of British Columbia for distribution to the appropriate agency:*
>
> JURY RECOMMENDATIONS:
>
> To: Canada Border Services Agency (CBSA)
>
> 1. Create a dedicated Holding Centre for immigration detainees:
>
> - Centre should be staffed by CBSA employees.
>
> (Exhibit 61)

Again, the Union submits that this is work that should be handled by bargaining unit personnel. The Union's proposal concerning contracting out would ensure this.

The language proposed by the Union supports the protection of the integrity of the public service. The Employer makes yearly statements of congratulation to and acknowledgement of public service workers, including this one from June 2019, when the Honourable Joyce Murray, President of the Treasury Board, communicated:

> "For more than 150 years, our public servants have been serving Canadians with dedication, making huge differences within and outside our country's borders.

> That's why Canada's public service has been ranked the best in the world. Congratulations!" (Exhibit 62)

This was further echoed by the Prime Minister's statement during the same week:

> "This week, we celebrate our dedicated public servants across Canada, who worked hard to deliver real results for Canadians. If we look at what Canada's public service has accomplished this past year, it's easy to see why it is one of the most effective in the world." (Exhibit 63).

Therefore, it should not surprise the Employer that the Union has proposed language that supports the ongoing success of the public service, for generations to come. The proposed language introduces a 'pause button' on any ongoing and new contracting out initiatives that the Employer may be contemplating. This was echoed in the Union's submission to 2021 Pre-Budget Consultations in the public service recommendations to reject efforts to contract out new public service work (Exhibit 64). Securing protections and a framework for discussion within the Collective Agreement respects the continued valuable contributions of public service workers. Similar collective agreement language currently exists elsewhere in the core public service; Article 30: Contracting Out, in the CS agreement between PIPSC and the Treasury Board Secretariat, contains language that our proposal builds upon. (Exhibit 65)

A comprehensive, trained, and secure public service is crucial to the ability of any government to continually provide the programs and services mandated by Parliament. Relying on contracted-out services rather than the professionalism, expertise and dedication of bargaining unit members does a disservice to the workers, the public service as a whole, the public and to the economy, as was touched on by *The Honourable Scott Brison* when he was President of the Treasury Board in May 2016.

> "By restoring fair and balanced labour laws, the Government is recognizing that labour unions play an important role protecting workers' rights and strengthening the middle class." [30]

Inclusion of such contract language also supports a public service created via a legislative framework, one that ensures appointment by merit and that the composition of the public service is an accurate reflection of the diversity of the people that it serves, throughout the various geographic regions. It also fosters meaningful consultation between the Employer and the Union, and values investments made in training and upgrades necessary for workers to succeed within the changing nature of their work environment.

For too long, successive governments have relied heavily upon contracting out the duties performed by past and now current public service workers. In March 2011, a CCPA published a paper, The Shadow Public Service: the swelling ranks of federal government outsourced workers, in which it observed:

> "A handful of outsourcing firms have become parallel HR departments for particular federal government departments. Once a department picks its outsourcing firm, a very exclusive relationship develops. These private companies now receive so much in contracts every year that they have become de-facto wings of government departments. These new "black-box" wings are insulated from government hiring rules. They are also immune from government information requests through processes like Access to Information and Privacy (ATIP).
>
> In essence, they have become a shadow public service without having to meet the same transparency standards of the actual public service. Evidence suggests the federal government is turning to personnel outsourcing, circumventing hiring rules by relying on pre-existing "standing offers" with outsourcing companies. As a result, outsourced contractors are no longer short-term or specialized — they are increasingly employed for years on a single contract.

[30] Government of Canada to Repeal Changes to Federal Public Service Labour Relations Measures, May 25, 2016 https://www.canada.ca/en/treasury-board-secretariat/news/2016/05/government-of-canada-to-repeal-changes-to-federal-public-service-labour-relations-measures.html

> In short, the growing and concentrated nature of outsourcing has created a shadow public service that works alongside the real public service — but without the same hiring practices or pay requirements" [31]

A strong public service also helps strengthen the economy. A new study suggests that hiring more federal public sector workers would benefit the Canadian economy and support a strong, diverse middle class.[32] The Union values that and asserts that the contract language being sought supports such goals.

Public service workers are dedicated to their workplace and to the work that they do in support of the public. They are equipped with intimate institutional knowledge of the work environment, valuable to both the smooth operation of existing programs and to the successful cultivation of new ideas. Securing contract agreement language that recognizes and respects that is next in nurturing our continued ranking as the best public service in the world.

Considering these facts, the Union respectfully requests that its proposal for the inclusion of a new article on Contracting Out be included in the Commission's award.

[31] The Shadow Public Service: the swelling of the ranks of federal government outsourced workers, David Macdonald, Canadian Centre for Policy Alternative (CCPA), March 2011 https://www.policyalternatives.ca/publications/reports/shadow-public-service

[32] IRIS, The Public Services: an important driver of Canada's Economy, Sept 2019 https://cdn.iris-recherche.qc.ca/uploads/publication/file/Public_Service_WEB.pdf (Exhibit 66)

APPENDIX "A"

RATES OF PAY AND PAY NOTES

PSAC PROPOSAL

1. Paid Meal Period

The Union proposes to introduce a forty (40) hour work week with a thirty (30) minute paid meal break for every eight (8) hours.

2. Market adjustment

The Union proposes a market adjustment of 4.4% to all levels of the FB salary grid. Effective June 21, 2018, prior to applying an economic increase.

3. General Economic Increases

Increase all rates of pay in Appendix A as follows:

- Effective June 21, 2018, after market adjustments: 2.8%
- Effective June 21, 2019: 2.2%
- Effective June 21, 2020: 1.5%
- Effective June 21, 2021: 1.5%

Duration of agreement

- The Union proposes that the new collective agreement expire on June 20, 2022.

4. Article XX – Firing Range Fees Reimbursement

Upon receipt, the Employer shall reimburse employees for all fees associated with access to firing ranges and storage of firearms.

EMPLOYER PROPOSAL

Appendix A - Rates of Pay

- June 21, 2018 - increase to rates of pay: 2.8%
- June 21, 2019 - increase to rates of pay: 2.2%
- June 21, 2020 - increase to rates of pay: 1.35%

The Employer proposes to implement increases in accordance with Appendix “D” - Memorandum of Understanding between the Treasury Board of Canada and the Public Service Alliance of Canada with respect to Implementation of the Collective Agreement.

Amounts in respect of the period prior to the implementation date will be paid as a retroactive payment, in accordance with Appendix D – Memorandum of Understanding between the Treasury Board of Canada and the Public Service of Canada with respect to Implementation of the Collective Agreement. Subsequently, amounts will be provided as increases to rates of pay.

ARTICLE 64:

DURATION

64.01 This agreement shall expire on **June 20, 2021.**

RATIONALE

Public service compensation serves to attract, retain, motivate and renew the workforce required to deliver results to Canadians. Before we begin to review the various reasons supporting the reasonableness of the Union wage proposal it is important to re-state the factors to be taken into account by the Public Interest Commission (PIC) in rendering its recommendation. Those factors can be found in section 175 of the PSLRA:

> ***175.*** *In the conduct of its proceedings and in making a report to the Chairperson, the public interest commission 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 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.[33]

[33] Section 175 of the Federal Public Service Labour Relations Act: https://laws-lois.justice.gc.ca/eng/acts/p-33.3/page-13.html (Exhibit 67)

The present section sets out to demonstrate how the Union's position is consistent with those factors. We will also demonstrate how the employer proposal is inadequate considering Section 175 factors.

For the Union, the principle that wages should be determined in relation to relevant labour markets is imperative. The work of members in the FB group is unlike the work of any other public service employees. The recognition of the distinction between the work performed by most members of the FB group and other public service group is critical. While they share the same employer, CBSA employees and those of other departments within the Core Public Administration have fundamental differences that must be acknowledged, particularly within the context of compensation.

The most compelling comparators for members of the FB group can be found in other law enforcement agencies across Canada. There is no perfect comparator for members of the FB group working for the CBSA. The FB group is not only distinct from the rest of the federal public service; it is also somewhat unique amongst the other law enforcement agencies in Canada. There can be no doubt that employees in the FB bargaining unit today perform duties that are analogous with workers in other law enforcement organizations. Employees in the bargaining unit carry out a range of duties associated with administration and enforcement of the law, from surveillance, to investigation, to intelligence work, to escorted removals, to seizures and arrests, to joint operations with other enforcement agencies. Border Services Officers, who represent most of the employees in the bargaining unit, enforce over 90 acts, regulations, and international agreements on behalf of federal departments, agencies, the provinces and territories and a significant majority carrying firearms (Exhibit 7).

At the federal level the closest comparator for the FB group is the RCMP and, to a lesser extent, Correction Officers at CSC. In the broader public sector, the closest comparators are provincial, regional, and larger municipal police services across Canada.

To recruit retain and motivate the best workforce for the job, CBSA must be able to offer a competitive and relevant compensation package to its employees. Given the historical negotiation framework for members of this group and given the various conditions that have led to fiscal restraint measures over the recent past, both the total compensation and base salary for member of the FB group are less competitive with the broader law enforcement community in Canada. Not only are employees finding their basic compensation packages substandard, they also find that this is also the case with their pension entitlement, particularly the option for early retirement. Moreover, allowances intended to offset certain hardships associated with the job are insufficient and union members who committed their life working for the CBSA feel that their long-term engagement is not valued. Increases to the dog handlers' allowance, replication of pension entitlements that include early retirement (i.e., a norm in the law enforcement community), the introduction of an escorted removals premium, and replication of plain clothes, fitness and wellness, and dry-cleaning allowances, as well as the proposal for firing range fees reimbursement reflect this reality.

These significant disparities in pay, pension and allowances between members of the FB bargaining unit and the broader law enforcement community across Canada serve to aggravate any recruitment challenges faced by the CBSA, as the pool of possible new members is shrinking and the competition between law enforcement organizations in Canada for qualified and performing applicants is rising. Successful organizations must offer rates of pay comparable to their competitors in the labour market.

The Union's wage proposal is based upon three broad principles:

1. fairness with respect to persons in similar positions in other Canadian Law enforcement organizations;
2. fairness and relativity within the federal public administration.
3. fairness within the context of current trends.

Before discussing these three principles that help shape the Union's proposals, it is important to first address and unpack two foundational arguments upon which the

employer's pay proposal is based: **(A)** Inability to pay arguments; and **(B)** the Canadian Economy and the Government of Canada's fiscal circumstances in the face of the COVID-19 pandemic.

A. Employer 'Rationale': (In)ability to Pay

Arbitral jurisprudence speaks clearly and consistently to the need to look past the financial status of public sector employers when considering ability to pay. The precedence and rationale behind rejecting ability to pay arguments will be referred to and discussed throughout this sub-section. This section will discuss how the employer's arguments tend to be (in)ability to pay arguments that should be viewed with caution and given limited weight due in part to a number of persuasive interest arbitrator decisions which problematize the foundation of these types of arguments.

As it is often the case in public sector bargaining, the employer will likely make claims the current economic climate, the state of Canadian economy and the Government of Canada's fiscal situation support their position. Again, the Union submits that this type of (in)ability-to-pay concern must be approached with caution. While there is no doubt that the Government's budgetary deficit has grown due to the economic stimulation in response to the pandemic, the Government of Canada is still in a very strong and stable position that is enviable when compared to its G7 counterparts.

The Federal Government through the Treasury Board is the Employer and therefore the "ultimate funder". The PSAC is unable to take part in funding talks between the agency and the Federal government, and therefore rejects the argument that the Employer's financial mandate should be determined by the constraints imposed by the federal government on the agency. Doing so would in effect result in the Employer unilaterally determining wage rates in collective bargaining.

The issue of lack of ability to pay because of bureaucratic mechanisms was addressed by Arbitrator Arthurs in his *Re Building Service Employees Local 204 and Welland County General Hospital* [1965] 16 L.A.C. 1 at 8, 1965 CLB 691 award:

> *If, on the other hand, the Commission refuses to assist the hospital in meeting the costs of an arbitral award, the process of arbitration becomes a sham. The level of wages would then be in fact determined by the Commission in approving the hospital's budget. Since the Union is not privy to budget discussions between the hospital and the Commission, it would then be in the unenviable position of being unable to make representations regarding wage levels to the very body whose decision is effective - the Commission.* (Exhibit 68)

Arbitrator Arthurs reasoned that an award that solely reflects an Employer's financial mandate as determined by another level of governance would, in effect, result in the "ultimate funder" determining the wage rates in collective bargaining. It would also logically flow that if an arbitrator is to consider ability to pay in this circumstance, it would evaluate the federal governments' ability to pay rather than the CBSA**.**

As it is often the case in public sector bargaining, the employer has made claims that the current economic climate, the state of Canadian economy and the Government of Canada's fiscal situation supports its position. Again, the Union submits that this type of (in)ability-to-pay argument must be approached with caution. Moreover, as we will be discussed in the following section, the Canadian economy is in a state of recovery and is projected to grow amidst economic indicators of strength and resilience.

The concept of 'ability-to-pay' has been rejected as an overriding criterion in public sector disputes by most arbitrators. The reason as to why it has been roundly rejected as a persuasive criterion by interest Boards of Arbitrations has been summarized as follows:

> *(1) "Ability to pay" is a factor entirely within the government's own control.*
>
> *(2) Government cannot escape its obligation to pay normative wage increases to public sector employees by limiting the funds made available to public institutions.*
>
> *(3) Entrenchment of "ability to pay" as a criterion deprives arbitrators of their independence, and in so doing discredits the arbitration process.*
>
> *(4) Public sector employees should not be required to subsidize public services through substandard wages.*

(5) Public sector employees should not be penalized because they have been deprived of the right to strike.

(6) Government ought not to be allowed to escape its responsibility for making political decisions by hiding behind a purported inability to pay.

(7) Arbitrators are not in a position to measure a public sector employer's "ability to pay"[34].

In light of these concerns, numerous interest arbitrators have consistently recognized that to give effect to government fiscal policy would be equivalent to accepting an ability to pay argument and thus abdicating their independence:

The parties know that ability to pay has been rejected by interest arbitrators for at least decades. Chief Justice Winkler, in his award cited the following passage from an award by Arbitrator Shime in Re McMaster University.

"...there is little economic rationale for using ability to pay as a criterion in arbitration. In that regard I need only briefly repeat what I have said in another context, that is, public sector employees should not be required to subsidize the community by accepting substandard wages and working conditions."[35]

The employer's framing of the current economic climate, the state of Canadian economy and the fiscal situation of the Government of Canada conveniently attempts to imply the need for insufficient economic increases due to the need for budgetary restraint. Therefore, the Union submits that the state of the Canadian economy and the government of Canada's fiscal circumstances should (at best) be given limited weight, particularly when the government has it within its power to determine its own ability to pay by setting its budget. Again, the Union submits that this type of (in)ability-to-pay concern must be approached with caution.

[34] Jeffrey Sack, Q.C., "Ability to pay in the Public Sector: A Critical Appraisal", *Labour Arbitration Yearbook*, 1991, vol. 2, 277 to 279.
[35] *University of Toronto Faculty Association v. University of Toronto*, Interest Arbitration, Ontario, Martin Teplitsly, Sole Arbitrator October 5, 2010. (Exhibit 69).

B. Economic Indicators and the Canadian Government's Fiscal Circumstances in the face of the COVID-19 pandemic

This section will take inventory of economic indicators including the real GDP, employment rate, unemployment, inflation, labour force participation, and other consumer price variables that impact the day-to-day lives of our members. Actual and forecasted economic indicators are contextualized alongside the recent 2021 Federal Budget, the April 2021 Bank of Canada's Monetary Policy Report, and organizations that monitor Canada's fiscal and economic circumstances including the OECD, the IMF, the Conference Board of Canada, and Canada's largest banks.

Before overviewing this recently reported data, it is important to note that according to the Government of Canada's Fall 2020 Economic Statement (2020 FES), Canada entered the COVID-19 pandemic with the strongest fiscal position of any G7 country (Exhibit 70). Such a position allowed the government to take significant action to mitigate the economic shock precipitated by the COVID-19 pandemic:

> "But as our fiscal plan shows, there are brighter days ahead. And we can afford to do this. Canada entered this pandemic with the strongest fiscal position of any G7 country. We retain that position today. Federal debt servicing costs, relative to the size of our economy, are at a 100-year low. Canada benefitted from among the most significant declines in borrowing costs since the beginning of the year." [36]

On 19 April 2021, the Government of Canada's Finance Minister, Chrystia Freeland, presented the 2021 Federal Budget (Exhibit 71). This budget built upon that strong fiscal position as outlined in the 2020 FES and relative to the 2020 FES reported that better-than-expected economic growth indicators "had a positive impact on the projected budgetary balance over the forecast horizon."[37]

[36] Fall Economic Statement 2020 Supporting Canadians and Fighting Covid-19, p. vi. (Exhibit 70).
[37] Federal Budget 2021. A Recovery Plan for Jobs, Growth, and Resilience, p. 46 (Exhibit 71)

Fiscal capacity and flexibility

The COVID-19 pandemic has had swift and far-reaching economic consequences in countries around the world. Canada was not immune. Most of the effect (an immediate drop in GDP) and damage to the labour market took place in a very short time from mid-March to the end of April 2020. The economy rebounded at a faster pace than expected through the summer of 2020, following eased restrictions, reopening of businesses, and Canadians getting used to restrictions. That economic shock, as the Bank of Canada put it, was followed by an annualized quarterly rebound of 40.6% in the third quarter and stronger-than-anticipated growth of 9.6% in the fourth quarter of 2020 (Figure 1). In addition, in the first quarter of 2021, real GDP increased by 7.0% with 3.5% forecasted in the second quarter.[38]

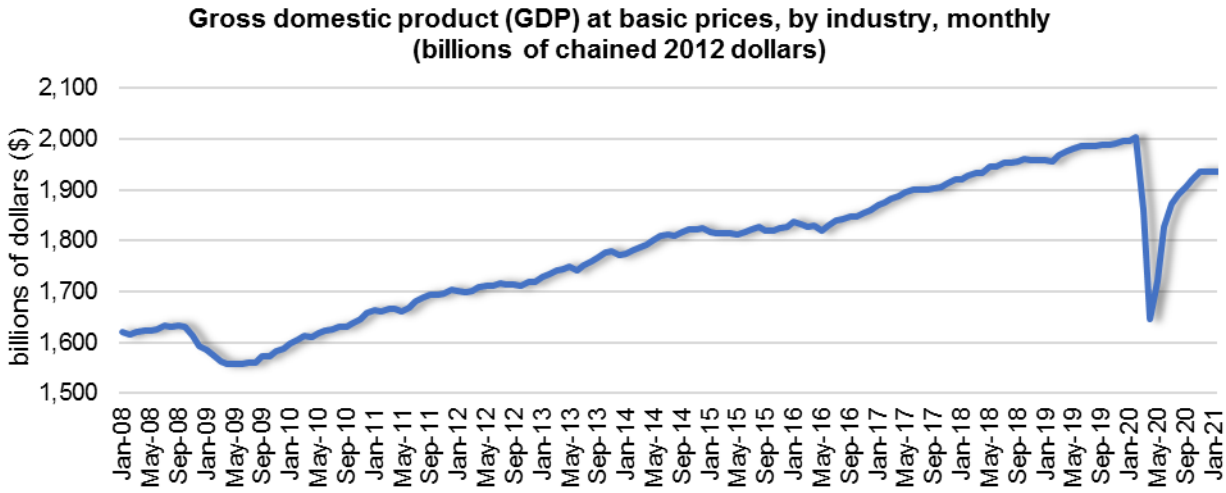


Figure 1: Gross domestic product (GDP) at basic prices, by industry, monthly (billions of chained 2012 dollars), data from Statistics Canada Table 36-10-0434-01[39]

At the end of 2020, while real GDP shrank 5.4% on the year, the Canadian economy showed remarkable resilience.[40] This contraction, however, was temporary and Canada is poised to continue the economic recovery that is already underway. Accordingly, the

[38] Bank of Canada Monetary Policy Report, April 2021, p. 12 (Exhibit 72)
[39] Statistics Canada. Table 36-10-0434-01 Gross domestic product (GDP) at basic prices, by industry, monthly (x 1,000,000). https://www150.statcan.gc.ca/t1/tbl1/en/cv.action?pid=3610043401 retrieved April 17, 2021.
[40] Gross domestic product, income and expenditure, fourth quarter 2020: https://www150.statcan.gc.ca/n1/daily-quotidien/210302/dq210302a-eng.htm

Bank of Canada forecasted annual average real GDP growth of 6.5% in 2021 (2.5 points higher than projected in January 2021), 3.7% in 2022, and 3.2% in 2023.[41]

The positive effect of the Government of Canada's significant actions and indeed increasing economic activity are made clear by Minister Freeland in the 2021 Federal Budget:

> "[Second], because our decision last year to support Canadians – at great cost, to be sure – is already paying off. Decisive government action prevented economic scarring in our businesses and our households, allowing the Canadian economy to begin strongly rebounding from the COVID recession, even before we have finished our fight against the virus […] The current, and necessary, lockdowns, are likely, of course, to slow that recovery. But we know – because we took the decision to preserve our economic capacity – that we can come roaring back."[42]

> "[E]conomic activity during the second wave has proved more resilient than during the initial wave showing that Canadians and businesses have adapted to operating under restrictions [. . .] Early indications suggest that this momentum has carried over to the beginning of the year. Forecasts point to real GDP increasing for the third quarter in a row, in stark contrast to expectations for second wave impacts set out in the *Fall Economic Statement*.[43]

The federal government's economic response demonstrates remarkable fiscal capacity and flexibility, with $512.6 billion dollars in federal support provided (Figure 2)**.** This strategy directly contradicts traditional positions of fiscal restraint. The Government of Canada's fiscal position and budgetary investments indicate no obstruction or barrier to providing fair wages and economic increases to federal personnel. Further, such investment boost growth through labour force participation. This is in line with the present government's long prioritization of increased program spending over fighting the deficit even before the COVID-19 pandemic.

[41] Bank of Canada Monetary Policy Report, April 2021, p. 12 (Exhibit 72**)**
[42] Federal Budget 2021. A Recovery Plan for Jobs, Growth, and Resilience, p. 25 (Exhibit 71)
[43] Federal Budget 2021. A Recovery Plan for Jobs, Growth, and Resilience, p. 29 (Exhibit 71)

Table 2.1

Canada's COVID-19 Economic Response – Federal, Provincial, and Territorial Support

	Federal	Provincial and Territorial	Total
Impact ($ billions)			
Direct Measures to Fight COVID-19 and Support People	345.6	77.6	423.2
Tax and Payment Deferrals	85.1	31.5	116.6
Credit Support	81.9	2.6	84.5
Total	**512.6**	**111.6**	**624.2**
Share of Spending (per cent)			
Direct Measures to Fight COVID-19 and Support People	81.7	18.3	100
Tax and Payment Deferrals	73.0	27.0	100
Credit Support	96.9	3.1	100
Total	**82.1**	**17.9**	**100**

Notes: Provincial and territorial government announcements; Department of Finance Canada calculations. As of April 9, 2021. For federal totals, the data reflects the total impact which differs from fiscal cost on an accrual basis. Totals may not add due to rounding.

Figure 2: Canada's Federal Economic Response to COVID-19

Importantly, Canada's fiscal policy support and its response including the 2021 Federal Budget investments have been among the highest of the G7 nations (Figure 3).

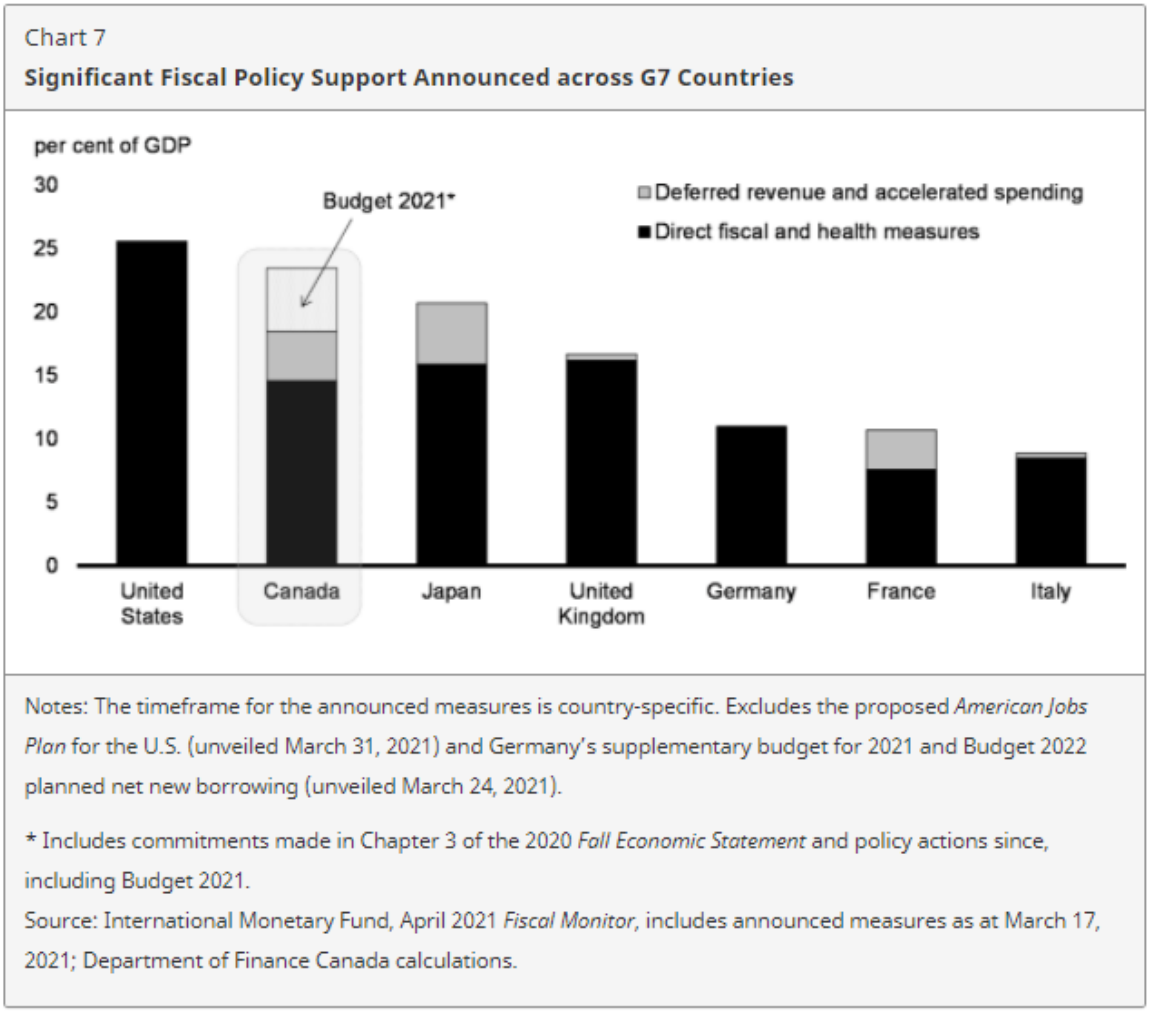


Figure 3: Canada's fiscal support relative to G7 nations[44]

Economic Activity Recovery

Economic activity during the second wave was more resilient, and Canada came out far ahead of forecasters' mid-2020 predictions, while many peer countries saw contractions. Early indications show that the momentum has carried over into 2021, with real GDP increases in its third quarter in a row, greatly surpassing expectations that were set out in the Fall Economic Statement. Budget 2021 predicts a projected level of real GDP almost 2% higher than projected in the Fall Economic Statement.[45]

[44] Federal Budget 2021. A Recovery Plan for Jobs, Growth, and Resilience, p. 31 (Exhibit 71)
[45] Federal Budget 2021. A Recovery Plan for Jobs, Growth, and Resilience, p. 39 (Exhibit 71)

In addition to the 2021 Federal Budget, the following table (Table 9) summarizes the real GDP growth forecasts of eleven (11) organizations who monitor Canadian economic growth.

GDP	2021F	2022F
TD Economics[46]	6.0%	3.9%
Royal Bank of Canada[47]	6.3%	4.1%
CIBC[48]	5.6%	4.4%
BMO[49]	6.5%	4.0%
Bank of Nova Scotia[50]	6.4%	4.1%
National Bank of Canada[51]	5.6%	4.0%
Desjardins[52]	6.3%	3.7%
Bank of Canada[53]	6.5%	3.7%
Conference Board of Canada[54]	5.8%	4.0%
OECD[55]	4.7%	4.0%
IMF[56]	4.4%	4.1%
Average	**6.0%**	**4.0%**

Table 9: Real GDP Growth – Forecasted (F)

Starting from a position of financial strength and continued sound financial management, Canada's fiscal position remains in an enviable fiscal position relative to international peers, with the lowest net debt-to-GDP ratio in the G7.[57] Furthermore, the federal government committed to use the Canada's considerable financial flexibility to

[46] TD. Mar. 2021: https://economics.td.com/domains/economics.td.com/documents/reports/qef/2021-mar/5-ca-outlook.htm
[47] RBC. Mar. 10, 2021: https://royal-bank-of-canada-2124.docs.contently.com/v/vaccines-put-global-economy-on-recovery-track-pdf
[48] CIBC. Apr. 8, 2021: https://economics.cibccm.com/economicsweb/cds?ID=12331&TYPE=EC_PDF
[49] BMO. Apr. 16, 2021: https://economics.bmo.com/media/filer_public/27/94/2794cf10-35ac-4be2-a856-b6370c5b10bc/outlookcanada.pdf
[50] BNS April 22, 2021: https://www.scotiabank.com/content/dam/scotiabank/sub-brands/scotiabank-economics/english/documents/forecast-tables/forecast_20210422.pdf
[51] NBC. Apr. 2021: https://www.nbc.ca/content/dam/bnc/en/rates-and-analysis/economic-analysis/monthly-economic-monitor.pdf
[52] Desjardins. April 23, 2021: https://www.desjardins.com/ressources/pdf/pefm2104-e.pdf
[53] Bank of Canada Monetary Policy Report, April 2021, p. 12 (Exhibit 72)
[54] Conference Board of Canada. April 19, 2021: https://www.conferenceboard.ca/focus-areas/canadian-economics/canadian-outlook
[55] OECD's Canada Economic Survey. Mar. 11, 2021: http://www.oecd.org/economy/canada-economic-snapshot/
[56] IMF Executive Board Concludes 2021 Article IV Consultation with Canada. Mar. 18, 2021: https://www.imf.org/en/News/Articles/2021/03/17/pr2171-canada-imf-executive-board-concludes-2021-article-iv-consultation-with-canada?cid=em-COM-123-42795
[57] Federal Budget 2021. A Recovery Plan for Jobs, Growth, and Resilience, p. 27 (Exhibit 71)

provide fiscal support until the economy and employment rates are back on track, while ensuring the sustainability of public finances over the long term.[58]

While infection surges and consequential restrictions and containment measures bring about some economic setbacks largely affecting workers in high contact, public-facing sectors subject to pandemic-related public-health measures, it is difficult to predict the length of the recovery period it is important to remember that we *will* recover.

According to the Bank of Canada's January 2021 Monetary Policy Report (Exhibit 72), several mitigating factors will ameliorate the effects brought on by an increase in the requirement for containment measures, and the consequential interruption of economic growth:

- Since early 2020, consumers and businesses are getting better at adapting to the changing conditions which will temper the severity of new surges.
- Containment measures are temporary, and we can anticipate a sharp bounce-back in economic activity when restrictions are eased.
- Life- and livelihood-saving vaccines are rolling out sooner than anticipated and reducing levels of uncertainty. The Bank projects that this earlier roll-out might reduce the recovery period by up to six months.[59]

The timing and strength of the economic recovery will therefore be affected by both the vaccine roll-out and continuing evolution of the virus.

Over the medium term:

- We can expect an increase in consumption as more Canadians are vaccinated and import growth will pick up with the demand for retail goods.
- Services in the most affected sectors will start to pick up and spur job creation.
- Uncertainty will decrease as broad immunity increases and we can expect business confidence to improve, leading to stronger business investment and exports, consistent with broad economic recovery.

[58] Fall Economic Statement 2020 Supporting Canadians and Fighting Covid-19, p. iv. (Exhibit 70).
[59] Bank of Canada Monetary Policy Report, January 2021, p. 9 (Exhibit 72A)

Over the medium- to longer-term:

- Reduced pandemic-related uncertainty and improving global investment will encourage global recovery, which is predicted to help Canadian exports over from 2021 through 2022.
- Lifted travel restrictions will help service exports rebound strongly, then level out to moderate levels. Projected higher levels of the Canadian dollar may act as an opposing force.

Restrictions put in place to protect the health of Canadians will and temporarily impact economic activity, however, it is evident that Canada's economy is able to adapt and will bounce back quickly when restrictions are lifted. Large-scale fiscal support and investments in the United States may al so spill over into the Canadian economy.[60]

Job Recovery

Like growth, economic indicators such as the employment rate in the face of the pandemic is dependent on the severity of the COVID-19 variant-related restrictions, containment, and vaccination rollout**.** Key economic indicators related to labour mapped out in the 2021 Federal Budget include:

- Employment rate: As of February 2021, Canada is now 1.3% below pre-pandemic employment levels—approximately a 460K jobs shortfall.
- Total hours worked: As of February 2021, Canada is now 1.2% below pre-pandemic levels[61]

The direct effect of subsiding Covid-19 numbers across Canada on the labour force was evident almost immediately, where the sectors most affected by physical distancing were up strongly, leading to a much better than expected boost of 303,000 jobs in March 2021. Full-time jobs were up for the 11th straight month in a row and within 1% of

[60] Federal Budget 2021. A Recovery Plan for Jobs, Growth, and Resilience, p. 38 (Exhibit 71)
[61] Federal Budget 2021. A Recovery Plan for Jobs, Growth, and Resilience, p. 36 (Exhibit 71)

pre-pandemic numbers. For context, the US came in with a 4% shortfall in full-time jobs.[62]

A manageable federal debt load

The COVID-19 pandemic and the resulting serious health- and economic fall-out are a once-in-a-century type of crisis. Addressing the detrimental effects on economic growth and employment requires once-in-a-century measures and financial commitments that will consequentially lead to significant short-term deficits. Canada's level of projected recovery spending is in line with most of Canada's peer countries' economies. Although Canada will have federal debt that is higher than what we have "become accustomed to" over recent years, this is not a hindrance to providing fair wages and economic increases.

Current costs of servicing our national debt relative to our economy are the lowest in over a century. The Bank of Canada, like banks around the world, has made public debt very affordable by easing monetary policy. Measures such as cutting policy rates to their current very low levels and implementing government bond purchase plans achieved a massive decline in interest rates. Significantly more affordable public debt issuances have put Canada in a position to refinance existing debt and new debt at record-low market rates.

The fiscal deficit ($354.2 billion for 2020-21) is revised from the forecast in the fall statement, largely due to improved economic conditions. It should gradually shrink to $30.7B in 2025-26, a level similar to that before the pandemic. The debt-to-GDP ratio is expected to peak on March 31, 2022, gradually declining from there on to March 31, 2026 (Figure 4).

[62] Monthly Economic Monitor, National Bank of Canada Financial Markets. Matthieu Arseneau and Jocelyn Paquet. April 2021. https://www.nbc.ca/content/dam/bnc/en/rates-and-analysis/economic-analysis/monthly-economic-monitor.pdf

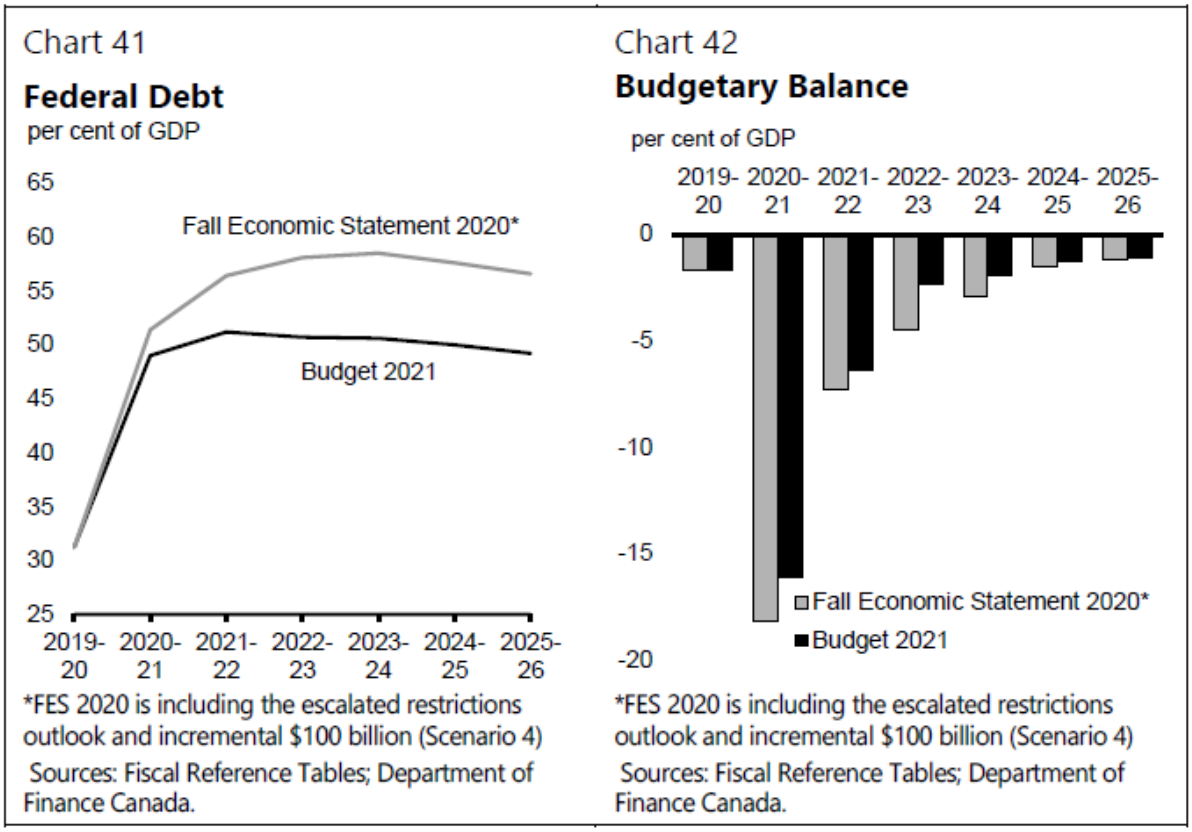


Figure 4: Projected federal debt and budgetary balance – Statements and Outlooks from the 2020 FES and 2021 Federal Budget.[63]

Federal debt charges are projected to fall below 1% GDP for 2020-2021, followed by a modest increase to 1.2% by 2025-2026. Debt servicing costs will be near their lowest level in over a century making debt affordable for decades to come **(Figure 5).** Canada is in an enviable position: it is likely to *exit* the pandemic with a debt-service ratio lower than many of its peers had *entering* it and has some breathing room.[64]

[63] Federal Budget 2021. A Recovery Plan for Jobs, Growth, and Resilience, p. 53 (Exhibit 71)
[64] CIBC Economics In Focus. A fiscal anchor for all seasons in Canada. March 15, 2021. Royce Mendes. https://economics.cibccm.com/economicsweb/cds?ID=12248&TYPE=EC_PDF

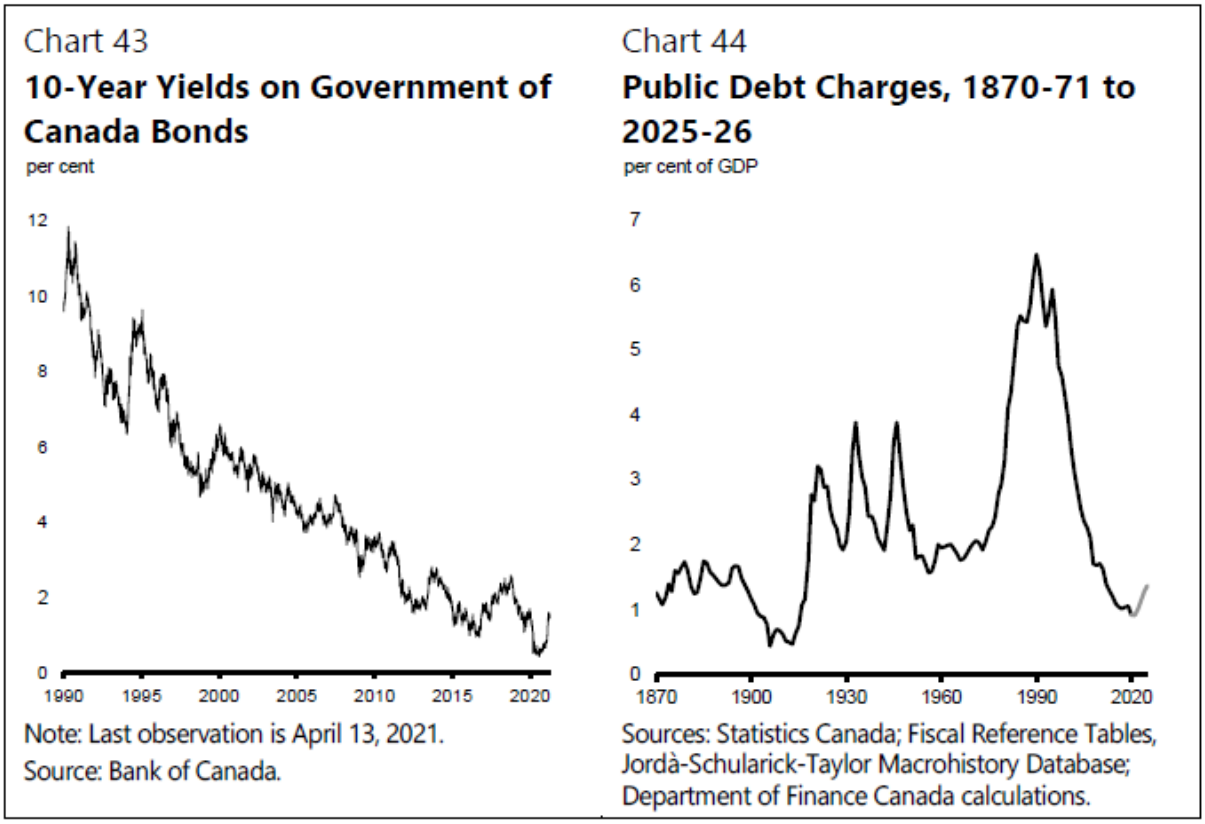


Figure 5: Canada's public debt is affordable and sustainable[65]

Finally, Canada maintains its credit worthiness and stable outlook despite expectations of the country's high fiscal deficit resulting from the implication of exceptional financial support mechanism, as reported by major credit rating agencies **(Table 10)**. The most recent update from DBRS Morning Star affirmed a AAA rating based on Canada's economic strengths and partial recovery:

> "Canada's AAA ratings are underpinned by the country's considerable fundamental strengths, including its sound macroeconomic policy frameworks, large and diverse economy, and strong governing institutions. The Stable trend reflects our view that Canada's credit profile remains strong despite the economic and health fallout from the pandemic."

Fitch's rating and stable outlook reflects the agency's "expectation that Canada's consolidated gross general government debt/GDP will stabilize over the medium term,

[65] Federal Budget 2021. A Recovery Plan for Jobs, Growth, and Resilience, p. 46 (Exhibit 71)

in line with the pre-coronavirus policies, and that the economy will gradually recover, supported by significant counter-cyclical monetary and fiscal policies."

Table 10: Canada: Credit Worthiness by Major Credit Rating Agencies

Agency	Rating	Outlook
Standard & Poor[66]	AAA	Stable
Moody[67]	Aaa	Stable
Fitch[68]	AA+	Stable
DBRS[69]	AAA	Stable

The COVID-19 pandemic and the resulting serious health- and economic fall-out are a once-in-a-century type of crisis. Addressing the detrimental effects on economic growth and employment requires once-in-a-century measures and financial commitments that will consequentially lead to significant short-term deficits. Canada's level of projected recovery spending is in line with most of Canada's peer countries' economies. Although Canada will have federal debt that is higher than what we have "become accustomed to" over recent years, this is not a hindrance to providing fair wages and economic increases to federal public servants.

[66] 'Sigh of relief' for Morneau as Canada keeps AAA S&P rating. Bloomberg (https://www.bnnbloomberg.ca/canada-hangs-onto-aaa-rating-as-s-p-counts-on-stimulus-taper-1.1469413#:~:text=S%26P%20standing%20by%20Canada's%20AAA,'%3A%20Former%20parliamentary%20budget%20officer&text=S%26P%20Global%20Ratings%20has%20affirmed,a%20rival%20credit%20rating%20agency). July 23, 2020

[67] Moody's affirms Canada's Aaa rating, citing economic strength. Bloomberg (https://www.bnnbloomberg.ca/moody-s-affirms-canada-s-aaa-rating-citing-economic-strength-1.1525160#:~:text=The%20country's%20economic%20strength%20and,rating%20with%20a%20stable%20outlook). November 19, 2020

[68] Fitch Downgrades Canada's Ratings to 'AA+'; Outlook Stable. Fitch's Ratings (https://www.fitchratings.com/research/sovereigns/fitch-downgrades-canada-ratings-to-aa-outlook-stable-24-06-2020/dodd-frank-disclosure). June 24, 2020

[69] DBRS Morningstar Confirms Government of Canada at AAA Stable. Mar 19, 2021: https://www.dbrsmorningstar.com/research/375559/dbrs-morningstar-confirms-government-of-canada-at-aaa-stable

1. Fairness with respect to persons in similar positions in other Canadian Law enforcement organizations

From the beginning of negotiations, the Union's wage proposal was grounded on the premise of parity with the law enforcement community—that sector norms be replicated (e.g., paid meal period, early retirement, plain clothes allowances, and others that compose the allowances proposal). As previously stated, the compensation principle that wages should be determined in relation to relevant labour markets is imperative. The recognition of the distinction between the work performed by most members of the FB group and other public service group is critical. The most compelling comparators for members of the FB group can be found in other law enforcement agencies across Canada. At the federal level the closest comparator for the FB group is the RCMP (and to a lesser extent Correction Officers at CSC). In the broader public sector, the closest comparators are provincial, regional, and larger municipal police services across Canada.

The factor of comparability has been applied by virtually all arbitrators as a major criterion in determining of wages and working conditions. For example, as Arbitrator Kenneth stated:

> *Fairness remains an essentially relative concept, and it therefore depends directly upon the identification of fair comparisons if it is to be meaningful; indeed, all of the general stated pleas for fairness inevitably come around to a comparability study. It appears to me that all attempts to identify a doctrine of fairness must follow this circle and come back eventually to the doctrine of comparability if any meaningful results are to be achieved.*[70]

This critical principle is reinforced by Section 175(b) of the PSLRA, which states that the PIC must consider:

> *(…) the necessity of offering compensation and other terms and conditions of employment in the public service that are comparable to*

[70] Kenneth Swan, The Search for Meaningful Criteria in Interest Arbitration, (Kingston: Queens University Industrial Relations Centre, 1978) (Exhibit 73)

> *those of employees in similar occupations in the private and public sectors.* (Exhibit 66)

In terms of comparison, the position of 1st Class Constable police officer - employed at law enforcement agencies across Canada - represents the most appropriate comparator given the nature of the work performed by employees in the FB bargaining unit, and given that Border Services Officers constitute a majority of employees in the bargaining unit.

In the past, arbitrators have recognized the uniqueness of public safety occupation:

> *"I accept the uniqueness of policing. It is not an occupation or profession comparable to other public sector employees. Both the nature of the work and the nature of the public responsibilities are different. This has to do with their duties and powers and, as captured in past arbitral awards and academic literature, the necessity at some point to lay their 'life on the line'".*[71]

The Union submits that the discrepancy in wages and in working conditions that currently exists between employees in the FB bargaining unit and workers employed in law enforcement are inconsistent with the principles contained in the Section 175 of the PSLRA. As examined in the Hours of Work rationale, a paid meal period is the norm in the national policing sector. It exists in every collective agreement covering workers employed with every major law enforcement agency in Canada. The pension plan for workers in the FB bargaining unit lags significantly behind other major law enforcement organizations in Canada. Wages are no different in this regard, in that FB employees are significantly behind appropriate comparators when it comes to base salary comparison.

The following table **(Table 11)** represents the annual salaries of First-Class Constable effective in Fiscal 2017-2018. All major Canadian police organizations are listed. Organizations from every province as well as all police organizations with more than 1000 officers are also listed in the table. Law enforcement collective agreements and

[71] Arbitrator Stan Lanyon, Q.C.in Vancouver Police Board v. Vancouver Police Union,1997B.C.C.A.A.A.No.62.

arbitral awards across Canada, including municipal, provincial, and regional police services, as well as the RCMP anchor the methodology used to calculate an appropriate market adjustment.

In terms of base annual salary and using the FB-03 level as the key benchmark, employees in the FB group are $9,365 or 11.4% behind the national weighted average salary *prior* to the introduction of a forty (40) hour work week with a thirty (30) minute paid meal break for every eight (8) hours.

After the introduction of a forty (40) hour work week with a thirty (30) minute paid meal break for every eight (8) hours, the FB group lag the national weighted average by $3,843. After the introduction of the paid meal period, but prior to the application of the general economic increase, a market adjustment of 4.4% is applied.

Table 11: Canadian 1st Class Constable Salaries Comparison[72,73]

Jurisdiction	Province	Number of Officers (2018)	1st Class Cst. Salary (FY 2018-19)
RCMP[74]	National	19,098	$86,110
Edmonton	AB	1700	$103,144
Saskatoon	SK	510	$101,953
Winnipeg	MB	1383	$101,754
Calgary	AB	2180	$101,370
Toronto	ON	5650	$100,923
OPP	ON	5725	$100,469
York Reg.	ON	1626	$100,421
Peel Reg.	ON	2036	$100,420
Vancouver	BC	1327	$100,220
Halifax Reg.	NS	531	$98,593
Ottawa	ON	1365	$98,450
Saint John	NB	150	$94,627
Royal NFLD Constabulary	NFLD	404	$87,159
Montréal	QC	4557	$84,445
Charlottetown	PEI	74	$82,460
Sûreté du Québec	QC	5400	$78,341
TOTAL		53,716	
National weighted average of 1st class constables:			**$91,776**
Current FB-03 Salary:			$82,411
Difference between national weighted average and FB-03 salary prior to the paid meal period proposal:			**$9,365**
Paid Meal Period Proposal: • Introduce a forty (40) hour work week with a thirty (30) minute paid meal break for every eight (8) hours. • FB-03 salary after the paid meal period proposal applied:			$87,933
Market Adjustment Proposal: • After paid meal period applied, a market adjustment is then applied to align the FB-03 salary with the National weighted average			4.4%

(Exhibit 74 & 74A)

[72] All police department with more than 1000 officers are listed in this survey.
[73] The largest police departments in each province are listed in this survey.
[74] Of note, the largest organization, the RCMP, which has gone without a wage increase since 2016, is currently in negotiations with Treasury Board.

The Union proposal for general economic increases at 2.8% in 2018, 2.2% in 2019, 1.5% in 2020, and 1.5% in 2021 is also very much in line with average salary increases agreed to for other major law enforcement groups across Canada for 2018-2021.

Table 12: Canadian 1st Class Constable Salary Increases

Jurisdiction	Province	2018	2019	2020	2021
RCMP	National	N/A[75]	N/A	N/A	N/A
Edmonton	AB	2.50%	1.50%	1.50%	N/A
Saskatoon	SK	2.00%	1.75%	2.00%	1.60%
Winnipeg	MB	2.50%	2.50%	2.50%	2.50%
Calgary	AB	0.00%	1.50%	1.50%	N/A
Toronto	ON	1.75%	2.50%	2.50%	1.97%
OPP	ON	1.75%	2.15%	2.15%	1.97%
York Reg.	ON	1.75%	2.00%	N/A	N/A
Peel Reg.	ON	1.75%	2.00%	2.00%	2.00%
Vancouver	BC	2.50%	N/A[76]	N/A	N/A
Halifax Reg.	NS	2.75%	2.75%	N/A	N/A
Ottawa	ON	1.79%	1.99%	N/A	N/A
Saint John	NB	2.50%	2.50%	N/A	N/A
Royal NFLD Constabulary	NL	2.22%	Not all data available[77]		
Montréal	QC	2.75%	3.25%	2.75%	2.25%
Charlottetown	PEI	N/A	N/A	N/A	N/A
Sûreté du Québec	QC	2.50%	2.50%	2.50%	2.50%
	Average:	**2.07%**	**2.22%**	**2.16%**	**2.11%**

(Exhibit 74 & 74A)

The Union submits that its market adjustment, paid meal period, and wage proposal are entirely reasonable given the current discrepancy between the annual salary of Border Service Officers and its comparators. The combined proposals that replicate compensatory norms of the national policing community, including the paid meal period, closes the wage gap with that community for the FB group.

[75] First collective agreement negotiations are ongoing.
[76] Tentative agreement through to end of 2020 was rejected at ratification vote. Arbitration underway.
[77] RNC's salary formula is calculation based on 13 police services from Atlantic, Central, and Western Canada including the RCMP. The Regina Police Service collective agreement for 2018 was not accessible. (Exhibit 74A)

As Arbitrator Dupont wrote, substandard wages over a period of time does indeed become a subsidy, and a subsidy these workers should no longer have to pay:

> The weight to be attributed to allegations of inability to pay should differ from a situation where the employees, while negotiating are already vested with basic wages that are fair and reasonable as being comparable to wages paid by other employers for like work and services in the same sector, and employees, who while bargaining are vested with a wage level substantially below the norm. If the abnormal situation were to continue as it exists in this case it would indeed amount to subsidy by the employees by maintaining substandard wages and working conditions. The substantial disparity between the existing wages and those of the comparators alluded to earlier, including William Hay Centre, renders existing salaries substandard. Under those conditions the employer's alleged inability to pay even if established as I find it is, ought to merit much reduced weight.[78]

A significant majority of FB group members continue to experience a significant gap in terms of their wages versus their counterparts elsewhere in the broader Canadian labour market. There is a substantial disparity between existing wages, pension entitlement and such benefits as a paid meal period compared to those of the comparators alluded to earlier. It is a problem that requires a prompt remedy if the federal government is to deliver on its mandate to Canadians, and if the fundamental principles called for under Section 175 of the PSLRA are to be respected.

As CBSA continues to expand as a law enforcement agency, so too does its role as partner with other law enforcement organizations at the national level, but also as a partner to regional, municipal, and First Nation law enforcement organizations. For example, the Standing Committee on Public Safety and National Security highlights the integral partnership of CBSA and its officers in the Organized Crime Joint Operations Centre. At the Centre, the RCMP and CBSA take enforcement action and leverage each agency's investigative tools to supply intelligence on both domestic and

[78] W. Dupont, Ottawa Carleton Regional Residential Treatment Centre The Roberts/Smart Centre and CUPE 2376, 1998. (Exhibit 75)

international fentanyl shipments. In particular, the OCJOC focusses on investigations where synthetic opioids are being trafficked through the mail stream.[79]

Furthermore, with respect to another recent joint operations example, CBSA, alongside the Cornwall Police Service, OPP, Akwesasne Mohawk Police Service, RCMP, and US law enforcement agencies, initiated and led Project Hammerhead—an investigation into an alleged sophisticated cross border smuggling organization. CBSA, in its press release on the joint operations, emphasized:

> "This investigation highlights the success of multi-agency partnerships in addressing cross border criminal activity. These law enforcement partners work together as part of Border Enforcement Security Task Force (BEST), who, despite the pressures of the COVID-19 pandemic, remain committed to safeguarding their respective countries and keeping contraband goods from reaching their communities." [80]

Working side-by-side with other national and regional law enforcement agencies, and often leading the initiatives, the CBSA also continues to expand its criminal investigation capacity. As detailed on November 25, 2020 by CBSA President, John Ossowski, in testimony at the Standing Committee on Public Safety and National Security with respect to supplementary estimates, President Ossowski highlighted that CBSA would receive $10 million over the next five years in addition to ongoing funding to increase criminal investigation capacity.[81]

2. Fairness and relativity within the federal public administration

Fairness for in the context of recent settlements

[79] Standing Committee on Public Safety and National Security. Current Issues: https://www.cbsa-asfc.gc.ca/pd-dp/bbp-rpp/secu/2020-02-26/issues-enjeux-eng.html (Exhibit 76)

[80] Law enforcement partners dismantle alleged cross border smuggling organization. Feb 17, 2021: https://www.canada.ca/en/border-services-agency/news/2021/02/law-enforcement-partners-dismantle-alleged-cross-border-smuggling-organization.html. For another example, consider: CBSA seize 26 guns at Cornwall Port of Entry. Apr. 9, 2021: https://www.cornwallseawaynews.com/2021/04/09/cbsa-seize-26-guns-at-cornwall-port-of-entry/?fbclid=IwAR0D5sySt939AufJjsHWdvdOTggesEKEGyfIaBAWd8Z0YGdTO0QuIrvyBZs

[81] Mr. John Ossowski (President, Canada Border Services Agency): https://www.ourcommons.ca/DocumentViewer/en/43-2/SECU/meeting-9/evidence

With respect to the FPSLRA section 175(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*,” the Union submits that, although it is imperative to recognize the distinction between the work performed by the vast majority of members of the FB group and other public service groups (see previous section), even when looking at the recent round of bargaining for core public administration PSAC represented law enforcement public service employees, settlements for these employees exceeded what the Employer has offered in its wage proposal.

In the recent round of bargaining, settlements for law enforcement employees represented by the PSAC including enforcement and wildlife officers and their supervisors, park wardens, fisheries officers, and parole officers and supervisors—PSAC members responsible for law enforcement varying degrees —the Employer agreed to negotiated general economic increases of 2.8% in 2018, 2.2% in 2019 and 1.35% in 2020 plus additional adjustments in excess of the 0.15% in the final year of the contract for these union members. Simply put: No significant population in the law enforcement community represented by the PSAC accepted adjustments in addition to the general economic increase settlements of only 0.15%.

For example, a list of additional adjustments or allowances for law enforcement communities represented by PSAC over this cycle of negotiations include:

- **Parole officer and parole officer supervisors/managers.** A <u>new</u> $2,000 Allowance to incumbents of Welfare Programmes (WP) Group positions at the WP-04 level working as a Parole Officer and WP-05 level working as a Parole Officer Supervisor or Parole Officer Manager at Correctional Services Canada (CSC).

- **Fishery Officer.** A new annual allowance of $3,534 to incumbents of PM Group positions at the PM-05 to PM-06 levels for the performance of their duties as Fishery Officers.[82]
- **Fishery Officers.** Fishery Officers at the GT-02, GT03, GT-04 and GT-05 levels will receive an increase to their existing annual allowance from $3,000 to $3,534.
- **Enforcement and Wildlife Officers.** Enforcement and Wildlife Officers at Environment Canada who are fully designated with peace officer powers at levels GT-02, GT-03, GT-04 and GT-05 will receive an increase to their existing annual allowance from $3,000 to $3,534. The allowance will expand to include eligible supervisors at the GT-06 and GT-07 levels.[83]
- **Park Wardens.** Enforcement Officers at the GT-04 and GT-05 levels will receive an increase to their existing annual allowance from $3,000 to $3,534.[84]

The Union submits that the Employer's proposal for the FB group—that ignores the Union's law enforcement parity argument relative to appropriate comparators external to the CPA—also ignores the reality with respect to what has transpired for other unionized PSAC members responsible for enforcement of the law elsewhere in the CPA.

Again, a critical point for our purpose in this round of bargaining is the fact that the Employer has agreed to additional increases for the law enforcement community represented by the PSAC (see the occupational group listed above). For these groups, over and above the negotiated economic increases of 2.8% in 2018, 2.2% in 2019, and 1.35% (plus 0.15%) in 2020, additional remuneration was agreed to by the Treasury Board.

[82] PA Group (Parole officer and parole officer supervisors/managers & Fishery Officer) Available online: http://psacunion.ca/sites/psac/files/2020-08-26_pa_ratification_kit.pdf (Exhibit 77, p. 54 & 56)
[83] TC Group (Fishery Officers & Enforcement and Wildlife Officers). Available online:: http://psacunion.ca/sites/psac/files/2020-08-26_pa_ratification_kit.pdf (Exhibit 78, p. 21 & 22).
[84] Parks Group (Park Wardens). Available online: http://psacunion.ca/tentative-agreement-reached-parks-canada-members (Exhibit 79, p. 44)

Recently, the April 2020 CRA Public Interest Commission report addressed internal disparities between PSAC and PIPSC members at the CRA with market adjustments in addition to the argued settlement pattern for the years of 2016 and 2017:

> [22] The commission majority believes that a settlement for the PSAC group is unlikely unless the CRA receives a revised mandate from Treasury Board that would include addressing the 2.5% adjustment given to the PIPSC group within the CRA, whether the adjustment is granted retroactive to 2016 or phased in over time. This adjustment would be in addition to the 1.25% for each of 2016-17 and 2017-18 years that is normative in the federal public sector for those two years. We accept that the two bargaining units within CRA have traditionally matched each other's economic settlements; failure to do so in this round could create a serious internal inequity (PSLRB 590-34-39682).

Further to this, in a December 2018 FPSLREB arbitral award for PSAC and CSIS, chairperson Slotnick similarly recognized and awarded employees represented by PSAC a market adjustment of 1.75% in the third year of the agreement (not a lump sum) that exceeded the Employer argued settlement pattern (PSLRB 585-20-68).

Again, in a January 2013 TC Group Public Interest Commission report it was recognized that:

> [20] The Commission also observes that other negotiated settlements, arbitration awards and the recommendations of other Public Interest Commissions also included additional monetary items […] In addition, the parties agreed that a variety of specific, targeted adjustments were made in a number of bargaining units. The Commission has concluded that these adjustments form part of what we refer to as "the pattern."[85]

To that end, in the most recent round of bargaining, targeted adjustments in excess of the argued settlement pattern were made to law enforcement employees. With respect to the FB group, the work of members in the FB group is unlike the work of any other public service employees, yet in keeping with legislative imperatives the Union argues the need for the Commission to take into account the recently negotiated allowances and adjustments for the occupational groups listed above that form the PSAC represented law enforcement community in federal public service.

In summary, the Employer's proposal wage proposal does not address the foundational premise of the FB group wage proposal: parity with the broader law enforcement community across Canada. All proposals made by the Union during the course of negotiations, proposals that would take steps to align working conditions and compensation for employees in the FB bargaining unit with those of other Canadian law enforcement workers have been flatly rejected by the Employer. This Employer refuses to take external public sector comparability (FPSLRA, Sec. 175(b)) or internal comparability with the law enforcement communities represented by the PSAC (FPSLRA, Sec. 175(c)) under consideration.

Fairness for New Recruits (FB-02 Issue)

With respect to the Union's proposal concerning employee placement on the pay scale upon completion of training at Rigaud College, the Union is looking to resolve a problem that has been on-going since 2013. In June of that year the CBSA announced that Border Services Officer (BSO) graduates from Rigaud College would be working in a new BSO FB2 position for their first year on the job. Up until that time all BSO's were placed at FB 3 on the wage scale upon graduation. The Union was not consulted on this change and immediately expressed its opposition, given past practice and the fact that all BSO's are responsible for performing the same functions. The Union submitted then – as it does now – that the creation of this new BSO FB2 position was a direct result of cost-cutting efforts on the part of the CBSA stemming from cutbacks made under the Harper government.

Since 2015, grievances have been filed by PSAC members at CBSA related to the creation of the BSO FB 2 position, most of which being either classification of acting pay grievances (Exhibit 80). What's indeed remarkable about the number of grievances that have been filed is the fact that virtually all of the grievances have been filed by employees who are probationary. The grievances almost without exception stem from the fact that BSO's working as FB 2s are doing the same work as an FB 3 (Exhibit 81)

The employer has taken the position that employees working as BSO's in the FB 2 position are in fact 'trainees' and not assigned the same duties as BSO's working as FB 3's. The Union submits that this argument is nonsense, and that the sheer number of

[85] FPSLREB 2013 TC PIC Report: https://decisions.fpslreb-crtespf.gc.ca/fpslreb-crtespf/d/en/item/360434/index.do

grievances filed speak to this fact. These workers are armed officers working as BSO's at CBSA ports of entry. They should be compensated accordingly.

These workers are being underpaid. The employer has implemented this change without the Union's consent and is in violation of its obligations under the parties' collective agreement at CBSA work locations across the country. The Union's proposal would return compensation practices at CBSA for new BSO's to what they were for seven years prior to the unilateral change made by the employer and would ensure that these employees are paid appropriately.

3. Fairness in the Context of Economic and Labour Market Circumstances

Inflation

Over time, when wage increases do not make up for an increase in CPI, our members experience more and more difficulties in trying to meet their basic needs. The following table **(Table 13)** of inflation rates (annual CPI increase shown in percent) for Canada were constructed from rates published by major financial institutions.

Table 13: Inflation (%), Canada – Actual (a) & Forecasted (f)

Major Canadian Banks	2018a	2019a	2020f	2021f	2022f
TD Economics[86]	2.3	1.9	0.7	2.4	2.3
Royal Bank of Canada[87]	2.3	1.9	0.7	2.1	2.0
CIBC[88]	2.3	1.9	0.7	2.0	1.9
BMO[89]	2.3	1.9	0.8	2.3	2.2
Bank of Nova Scotia [90]	2.3	1.9	0.7	2.3	2.2
National Bank of Canada[91]	2.3	1.9	0.7	2.4	2.3
Desjardins[92]	2.3	1.9	0.7	2.1	1.5
AVERAGE:	**2.3**	**1.9**	**0.7**	**2.2**	**2.1**

[86] TD. Mar. 18, 2021: https://economics.td.com/domains/economics.td.com/documents/reports/qef/2021-mar/qefmar2021_canada.pdf
[87] RBC. Mar 10, 2021 : https://royal-bank-of-canada-2124.docs.contently.com/v/vaccines-put-global-economy-on-recovery-track-pdf
[88] CIBC. April 8, 2021: https://economics.cibccm.com/economicsweb/cds?ID=12331&TYPE=EC_PDF
[89] BMO. April 16, 2021: https://economics.bmo.com/media/filer_public/27/94/2794cf10-35ac-4be2-a856-b6370c5b10bc/outlookcanada.pdf
[90] BNS April 22, 2021: https://www.scotiabank.com/content/dam/scotiabank/sub-brands/scotiabank-economics/english/documents/forecast-tables/forecast_20210422.pdf

Canadians, including members of this bargaining unit are subject to continuing increases in living expenses. The Consumer Price Index (CPI) measures inflation and an increase in CPI/inflation translates into a reduction of buying power. When CPI rises faster than their wages, then consumers, such as our members, must spend more to maintain their standard of living.

The rising cost of Food and Shelter

When CPI increases outpace wage increases, as per the Employer's proposal, members lose buying power and find it more difficult to meet their basic needs. Of course, rising prices for food especially hurt lower and middle-income households and families, for whom food consumes a much larger share of their budget. Any price increases put a disproportionate amount of strain on their finances, making their everyday lives more precarious.

According to a new report by the non-profit Community Food Centres Canada (CFCC), an estimated 4.5 million Canadians experienced food insecurity before the COVID-19 pandemic. This number has surged by 39% during the pandemic and disproportionally affects Black, Indigenous, northern communities, single mothers, children, and newcomers to Canada. CFCC's survey confirms that the impact is far-reaching, where 81% of respondents indicated that food had a negative impact on their physical health and 79% indicated a negative impact of mental health (**Figure 6**).[93]

[91] NBC. Mar. 2021: https://www.nbc.ca/content/dam/bnc/en/rates-and-analysis/economic-analysis/monthly-economic-monitor.pdf
[92] Desjardins. April 23, 2021. https://www.desjardins.com/ressources/pdf/pefm2104-e.pdf
[93] Beyond Hunger – The hidden impacts of food insecurity in Canada. Community Food Centres Canada. 2020. See cfccanada.ca for full report.

Figure 6: Far-reaching impact of food insecurity (via CFCC).

The annual 2021 Canada Food Price Report tracks food prices and forecasts expected changes to food prices for the next year. For 2021, the report predicts an increase of 3%-5% in food costs, where a family of four can anticipate spending $13,907 on food for the year. The food inflation rate will therefore likely outpace the general inflation rate as it has for the last 20 years in Canada (**Figure 7** and **Table 14**). Our members need the Employer to provide competitive general economic increases that help offset surging costs for healthy foods.

Figure 7: **Food Price Index (2000-2020)** [94]

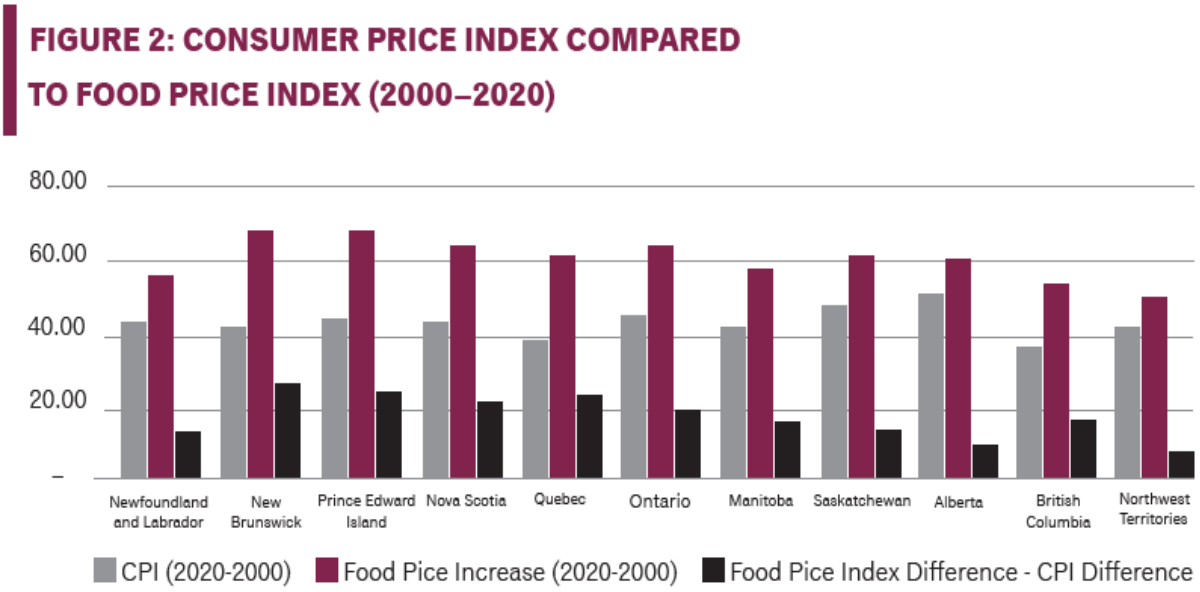


Table 14: **Anticipated inflation for food categories**[95]

Food Categories	**Anticipated increase (%)**
Bakery	3.5% to 5.5%
Dairy	1% to 3%
Fruits	2% to 4%
Meat	4.5% to 6.5%
Restaurants	3% to 5%
Seafood	1.5% to 3.5%
Vegetables	4.5% to 6.5%
Other	2% to 4%
All categories forecast:	**3% to 5%**

<u>Employment</u>

Following the steep decline in early 2020, Canada's economy strongly rebounded in the third and fourth quarters and the 2021 Federal Budget indicated 90% of the 3 million

[94] Food Price Report 2021 (Exhibit 82)
[95] Food Price Report 2021 (Exhibit 82)

lost jobs at the onset of the pandemic were recouped.[96] As of the March 2021 Labour Force Survey, the overall unemployment rate leveled out at 7.5% and participation rate remained steady at 65.2%.[97] Notably, higher-wage workers who are more likely to be able to work from home, including public service workers, tech, and professional services have been largely buffered from job loss and have even seen employment return to levels that are higher than before the pandemic. Job recovery in sectors most affected by containment measures, such as accommodation and food services, information, culture, and recreation are still underway and will correlate with the lifting of public-health related, mandatory containment measures. Furthermore, and as outlined in the table below (**Table 15**), major Canadian banks tracking unemployment all forecast the same trend: decreased unemployment and the tightening of the labour market.

Table 15 – Unemployment Rate (%), Canada – Actual (a) & Forecasted (f)

Major Canadian Banks	**2019a**	**2020f**	**2021f**	**2022f**
TD Economics[98]	5.7	9.6	7.2	6.1
RBC[99]	5.7	9.6	7.7	6.1
CIBC[100]	5.7	9.5	7.6	5.9
BMO[101]	5.7	9.6	7.5	6.0
Scotia Bank[102]	5.7	9.6	7.3	5.5
National Bank of Canada[103]	5.7	9.6	7.6	6.5
Desjardins[104]	5.7	9.5	7.4	6.1
AVERAGE:	**5.7**	**9.6**	**7.5**	**6.0**

[96] Federal Budget 2021. A Recovery Plan for Jobs, Growth, and Resilience, p. 79 (Exhibit 71)
[97] Labour Force Survey, March 2021: https://www150.statcan.gc.ca/n1/daily-quotidien/210409/dq210409a-eng.htm
[98] TD. Mar. 18, 2021: https://economics.td.com/domains/economics.td.com/documents/reports/qef/2021-mar/qefmar2021_canada.pdf
[99] RBC. Mar. 10, 2021 : https://royal-bank-of-canada-2124.docs.contently.com/v/vaccines-put-global-economy-on-recovery-track-pdf
[100] CIBC. Apr. 8, 2021: https://economics.cibccm.com/economicsweb/cds?ID=12331&TYPE=EC_PDF
[101] BMO. April 16, 2021: https://economics.bmo.com/media/filer_public/27/94/2794cf10-35ac-4be2-a856-b6370c5b10bc/outlookcanada.pdf
[102] BNS April 22, 2021: https://www.scotiabank.com/content/dam/scotiabank/sub-brands/scotiabank-economics/english/documents/forecast-tables/forecast_20210422.pdf
[103] NBC. Apr. 2021. https://www.nbc.ca/content/dam/bnc/en/rates-and-analysis/economic-analysis/monthly-economic-monitor.pdf

The weight of the Public Sector in the Canadian Economy

In the last 20 years, Public Sector programs and staff expenses have been trending down, mostly attributed to cuts from the Harper Government, which disrupted Canada's middle-class. In such, the Union suggests that the wages negotiated beyond the Employer's proposal for our members would help reverse this trend and account for a greater and positive impact on the Canadian economy. Public Sector jobs contribute to a social context which favors growth by creating stability hubs throughout economic cycles, by mixing up industries and economic growth in non-urban regions, while maintaining a strong middle-class and reducing gender-based and race inequities in the workforce.[105]

[104] Desjardins. April 23, 2021. https://www.desjardins.com/ressources/pdf/pefm2104-e.pdf
[105] Portrait de la contribution de la fonction publique à l'économie canadienne, Institut de Recherche et d'informations socio-économiques, François Desrochers et Bertrand Schepper, Septembre 2019, https://cdn.iris-recherche.qc.ca/uploads/publication/file/Public_Service_WEB.pdf (Exhibit 66)

APPENDIX C

WORKFORCE ADJUSTMENT

Part 1: roles and responsibilities

1.1 Departments or organizations

NEW 1.1.19 (renumber current 1.1.19 ongoing)

1.1.19

a) The employer shall make every reasonable effort to provide an employee with a reasonable job offer within a forty (40) kilometre radius of his or her work location.

b) In the event that reasonable job offers can be made within a forty (40) kilometre radius to some but not all surplus employees in a given work location, such reasonable job offers shall be made in order of years of service.

c) In the event that a reasonable job offer cannot be made within forty (40) kilometres, every reasonable effort shall be made to provide the employee with a reasonable job offer in the province or territory of his or her work location, prior to making an effort to provide the employee with a reasonable job offer in the public service.

d) In the event that reasonable job offers can be provided to some but not all surplus employees in a given province or territory, such reasonable job offers shall be made in order of years of service.

RATIONALE

Since the current agreement was signed, some changes undertaken by the federal government have served to highlight several deficiencies in the parties' Workforce Adjustment Appendix (WFA).

First, there is a need for the recognition of years of service in the context of Appendix C. Years of service would serve as a fair and objective standard for the treatment of a reasonable job offer. Second, the current definition of a guarantee of reasonable job offer (GRJO) does not provide an explicitly defined geographic radius within which the

employee might avail themselves of certain rights afforded under the Workforce Adjustment Appendix (WFA). The Union's proposals for Appendix C would address both of these deficiencies.

The Union is proposing that reasonable job offers would be made in order of years of service – meaning ultimately that it is the most junior employee that would face potential layoff.

Recognition of years of service is a central tenet of labour relations in Canada.

Indeed, to quote Brown and Beatty's Canadian Labour Arbitration (2007 edition, vol. 1): "Seniority systems are an integral part of virtually every collective agreement", and to quote Brown and Beatty's citation of the landmark 1964 *Tung-Sol of Canada Ltd* decision: "all arbitrators start from the premise that: '(s)eniority is one of the most far-reaching benefits which the trade union movement has been able to secure for its members by virtue of the collective bargaining process".[106] To cite a recent Canada Industrial Relations Board decision: "Seniority has often been viewed as the most fundamental advantage to working in a unionized environment. It is referred to by several experts as the "industrial adaptation of a hierarchic principle inherent [to] the human condition".[107]

Recognition of years of service is a concept that is firmly entrenched within FPSLREB labour relations jurisprudence. For instance, in a 2009 decision the Board stated that:

> (…) through his or her years of service, an employee attains a breadth of knowledge and expertise as a result of his or her tenure with the organization. Through time, an employee becomes a more valuable asset, with more capabilities, and should be treated accordingly. (PLSRB 485-HC-40).

[106] Brown, Donald and Beatty, David. Canadian Labour Arbitration (Fourth Edition), Vol.1, Canada Law Book, September 2006.
[107] *Air Canada*, [2006] CIRB no. 349.

Thus, the Union's proposal for recognition of years of service in the context of Appendix C would introduce a fair and objective standard in the treatment of a reasonable job offer, a standard that has been sanctioned via Board jurisprudence.

Years of service application is found in collective agreements in every industry, every jurisdiction, and every sector of the Canadian economy. For example, the collective agreements covering employees working for both the House of Commons and the Senate of Canada contain seniority recognition for the purposes of layoffs (Exhibit 83). It is also commonplace within the broader federal public sector, from Via Rail to Canada Post to the Royal Canadian Mint to the National Arts Centre to federal museums (Exhibit 83).

Of critical importance, years of service is already recognized under the parties' current collective agreement in the context of shift scheduling, vacation leave scheduling, scheduling on designated paid holidays and in the WFA itself as the tie-breaking procedure to choose which employee may avail themselves of the voluntary program. And yet it is not recognized in the context of layoff, where seniority application is most commonplace in the unionized world.

Lastly, years of service recognition in the context of layoff is ubiquitous in the law enforcement community. All of the following police forces recognize years of service relative to layoff clauses.

Law Enforcement Organization	**Layoff clauses with recognition of years of service**
Saskatoon	laid off in reverse order of their seniority
Winnipeg	Lay offs shall be made in reverse seniority
York	reverse order of seniority
Calgary	the most junior officer in each Rank shall be the first to be transferred to
Vancouver	laid off in the order of reverse seniority

OPP	The Employer and the Association agree that qualifications and seniority on a province-wide basis, are the primary consideration in the event that a reduction in the work force should become necessary.
Peel	Constables shall be laid off based on seniority, those constables with the least seniority shall be the first to be laid off
Ottawa	Lay-offs shall be made in reverse seniority order
Halifax	layoffs shall be in reverse order of service.
Saint John	In the case of lay-off, the employee with the least seniority shall be laid off first.
RNC	If a reduction in the rank of staff/sergeant occurs: (i) Staff/sergeants with the least amount of seniority in that rank will first be reduced to the rank of sergeant and seniority within that rank shall be determined by the date first promoted to sergeant.
Montreal	Dans le cas de mise à pied ou de licenciement, l'Employeur doit procéder selon l'ordre d'ancienneté à rebours, l'employé ayant le moins d'ancienneté est le premier visé.
Toronto	If two or more members have the same "seniority" or "seniority in the rank" date, the Board shall determine which member or members are the least senior for the purpose of lay-off or demotion.

(Exhibit 84)

In short, the Union's proposals concerning Appendix C are predicated upon what has already been established elsewhere within the federal public sector and the broader law enforcement community across Canada.

The Union submits that the employer has provided no cogent rationale whatsoever as to why these Union members should be denied a right that is commonplace for unionized workers across Canada in every sector, every industry. The absence of such a protection has led to utterly absurd and psychologically destructive practices on the part of the employer where dozens of employees have been threatened with potential layoff because the employer has needed to reduce five positions. These dozens of employees are then under the employers current practice required to interview for their own jobs. Countless hours, productivity wasted, and needless stress and anxiety created for far more employees than need to be affected. The Union's proposal would put an end to this practice and bring fairness to the process.

The second issue the Union's seniority-based proposal addresses is that of geography. Currently, the provisions contained in Appendix C put the onus on departments and deputy heads to provide a reasonable job offer in the event of possible layoffs. But there are no clear geographic criteria applied with respect to where the Employer may offer a reasonable job offer. This can create significant problems for employees. For example, in a recent situation for PSAC members in the PA group in 2017, the government decided to close the Vegreville Immigration Centre and move it to Edmonton along with its 250 employees. PSAC members were left with very difficult choices: uproot their families and move to Edmonton, accept a three-hour daily commute, or leave the job they value. This situation materialized due to the Employer's interpretation of the existing language that offering a job anywhere else in the country met the criteria under the Workforce Adjustment language as being 'reasonable'.

In the Vegreville instance, the Union position was that the Employer's use of the WFA was punitive in cases where the employees had no other choice but to voluntarily leave their jobs. PSAC took a grievance to arbitration on this issue and it was partially upheld. Because of the lack of clarity in the current WFA language, the decision sided with the Employer's interpretation that since the employee was in receipt of a GRJO, they did not have access to all of the options under the WFA if they refused to move. However, the arbitrator also ruled that employees in such a circumstance would have access to the transition support measure and/or the education allowance under the Voluntary Programs section of the WFA (Exhibit 85). At the hearing. the Employer testified that it knew its interpretation of Part III of the WFA would cause hardship but went ahead with it anyway.

The Union submits that this proposal is necessary due to the Employer' interpretation of Part III. Fundamentally, when a workplace is relocated, it means that if employees turn down a GRJO they are penalized. It implies that the Employer can force workers to move anywhere in the country or get laid off while limiting the WFA options to which they have access. The Union is proposing instead that people who cannot or do not wish to relocate to a certain location ought not to lose their rights under the WFA. As we

will discuss further below, the changes proposed by the Employer to the WFA are in direct contradiction to the Union position and we believe that the language should be further clarified to entrench the rights of employees.

Our proposal is that in the event that a reasonable job offer cannot be made within a 40-kilometre radius, the employee may elect to be an ‘opting’ employee and therefore avail themselves of the rights associated with ‘opting’ status. This would provide employees will all options under the WFA. The Union is proposing a 40-kilometre radius as it is consistent with the practice currently in effect for the NJC Relocation Directive. Indeed, a 2013 NJC Executive Committee decision indicated agreement with this principle. It was noted that in accordance with subsection 248(1) of the *Income Tax Act*, "relocation shall only be authorized when the employee's new principal residence is at least 40 km (by the shortest usual public route) closer to the new place of work than his/her previous residence". Furthermore, the 40-kilometre radius is currently the standard for more than 50,000 unionized workers at Canada Post. (Exhibit 86)

Moreover, applying geographic criteria to the process in terms of opportunities for employees exists already for tens of thousands of federal workers at Canada Post.

In light of these factors, in light of the jurisprudence concerning years of service recognition, in light of the clear comparator data, the Union respectfully requests that the Commission include the Union’s proposals for Appendix C in its recommendations.

APPENDIX G

Replace current with the following:

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE TREASURY BOARD OF CANADA
AND
THE PUBLIC SERVICE ALLIANCE OF CANADA
WITH RESPECT TO THE FIREARM TRAINING
PARTICIPANT SELECTION

This is a Memorandum of Understanding between the Treasury Board of Canada and the Public Service Alliance of Canada with respect to the Government of Canada's commitment to arm CBSA Officers by March 31, 2016.

If an employee fails to meet the criteria for firearm and/or control defence tactics training and certification, the Employer will make every reasonable effort to find them a placement opportunity within the CBSA at the same level and in the same headquarters area. If such placement is not possible, the Employer will make every reasonable effort to find them a placement opportunity elsewhere within the Public Service within the same headquarters area.

RATIONALE

In August of 2006 the federal government announced that it would be equipping officers working in inland enforcement and at land and marine ports of entry with firearms. At the time it was announced that the government's plan was to begin training officers in 2007, and that the implementation would take 10 years, with 2016 being the target date

for full implementation (Exhibit 87) The Union supported – and continues to support – this initiative. Indeed, the Union lobbied for many years to have officers armed.

Shortly after this announcement the PSAC application for the creation of the FB Border Services bargaining unit was sanctioned by the PSLRB. Notice to bargain for a first collective agreement was served in February of 2007.

From the very outset of negotiations in 2007 the Union signaled that protections for employees in the context of the implementation of firearms was a critical issue, and that two matters needed to be addressed. First, the process via which employees were to be selected for firearm training, and second, what happens to employees who participate in the training and are unsuccessful in passing the training. In tandem with the Union's raising of this issue in negotiations, the PSAC filed both a complaint with the Canadian Human Rights Commission and a policy grievance due to the failure of CBSA to establish whether or not the carrying of a firearm was or was not a bona fide occupational requirement - a factor that is critical in determining the Employer's obligations with respect to the accommodation of employees under human rights legislation. The Union also filed a bad faith bargaining complaint in the 2007-2010 round of negotiations stemming from an Employer communication concerning the arming initiative. The matter of bad faith bargaining complaint was resolved via Board mediation, while the policy grievance was ultimately resolved via a Board decision issued in November of last year (PSLRB 569-02-39). Hence the matters of who is selected, what happens to employees should they not be successful in passing the training – and in the case of litigation between the parties, who needs to be armed – have been matters of contention between the parties almost since the initiative's first introduction.

The reason the Union raised the matter in negotiations in the two previous rounds, and ultimately the reason why the parties agreed to enshrine certain protections for employees into the collective agreement, is because the parties recognize that there are

circumstances under which an employee might not pass firearm certification training and still meet accommodation requirements under the law.

The position taken by the Union in the previous three rounds, and ultimately agreed to by the Employer, was that while the Union supported the firearm initiative and provided that support with the backing of its membership, employees working for CBSA in 2006 were hired without firearm training as a condition of employment, and some of those employees had concerns about either the carrying of a firearm, or about what would happen if they were not successful in passing the training. The government had announced a 10-year phase in with the understanding that such a significant change in terms and conditions of employment would require time, and with the recognition that a smooth, step by step implementation was in the best interests of all concerned.

Ultimately the compromise that was arrived at between the parties in late 2008 was that, up until February of 2011 (immediately before the statutory freeze would take effect under the Section 107 of the PSLRA), only volunteers and employees hired with firearm training as a condition of employment would be selected to participate in firearm training, and that a number of protections would be afforded volunteers who were unsuccessful. Following February of 2011, a joint consultation committee would be established to discuss selection of firearm participants and placement of unsuccessful volunteers on a go forward basis. The February date was agreed to as the Employer had concerns about what would happen post the expiration of the current agreement, and wanted to make sure that some flexibility was afforded the parties in the event that it ran out of volunteers or other participants provided for under the collective agreement, or in the event that the CBSA's mandate was changed by the government.

The post-February 1, 2011 joint-committee provided for under the collective agreement has not met. The reason it has not met is because there has been no need for it to meet, as there remain a tremendous number of both employees hired with firearm training as a term and condition of employment and volunteers that have not yet been tested and trained. The Union recently sent a letter to the Employer raising a concern

that it was planning on deviating from its current practice concerning the selection of firearm training participants and therefore called for the joint-committee to be struck. The Employer responded by indicating that it has no plans to deviate from the practice, and should changes be contemplated, consultation with the Union will take place.

In the past round of negotiations, the parties again reached compromises and achieved protections in the context of both firearm training participant selection, as well as income security for those unsuccessful in passing the training among the population of officers hire prior to the 2007 deadline.

The Union's proposal with respect to Appendix F is simple: that the protections provided employees in the context of initial training under the current agreement be afforded in the context of recertification to all employees.

In September 2017, the external review of the Evaluation of the CBSA Arming Initiative wrote that as of March 2016, 6492 officers had received firearm training, with another 2000 having undergone recertification at four training campuses. In addition, CBSA noted in their Five-Year Human Resources Plan (2018-2023) that after intake 10 (15 Dec. 2017) was allocated, the CBSA, nationally, was short 637 BSOs. Coupled with departure and separation rates, and to account for this staffing deficit:

> An increase in the hiring of new BSOs is required for the Agency to retain its integrity on the frontlines. Based on the numbers provided in this 3-5 year plan, HRB would have to continue to recruit and train 360 BSOs per year and increase that baseline number with an additional 328 BSOs per year (1640/5) for a total of 688 BSOs per year (328+360) in order to replace officers who leave the front line and sustain the increased workloads due to funded projects (Exhibit 16).

To offset this vacancy problem, this necessary hiring and training remains ongoing. As the numbers suggest, officers undergoing recertification – both firearm and control defence tactics - is now where much of the training continues.

It should be noted that both the initial training and the recertification programs are strenuous. Indeed, the targeting threshold employed by CBSA is more difficult than that of the RCMP. It is for this reason for example that retirement schemes that provide for workers to retire after 25 years are the norm elsewhere in the broader law enforcement community.

It is also for this reason that the Union is proposing to broaden the language in the parties' current agreement to cover all employees in the context of recertification. What is being proposed is that the Employer make every reasonable effort to place employees who are unsuccessful. In light of CBSA's operations, the Union believes that there would be ample opportunity to place employees in operational settings where being armed is not essential. Now that several years have passed since the initial implementation of firearm and control defence tactics training were introduced additional protections are necessary. The language proposed is modeled on what is currently contained in the Job Security and Workforce Adjustment clauses of the parties' collective agreement.

The Union is also proposing to maintain the current joint consultation arming committee that was been established during the first round of bargaining. The Union sees no reason to eliminate a committee that has been a positive forum for discussion about a matter of critical importance to both the employees and the employer.

There is a history of the parties negotiating additional protections for employees in the context of the arming initiative. There are employee protections contained in the parties' current agreement with respect to technological change and workforce adjustment. The current arming joint consultation committee has been beneficial to both parties. The Union submits that it is only fair and reasonable given these facts that its proposals be introduced into the collective agreement. Consequently, the Union respectfully requests that they be included in the Commission's recommendation.

NEW APPENDIX

PSAC PROPOSAL

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE TREASURY BOARD OF CANADA
AND
THE PUBLIC SERVICE ALLIANCE OF CANADA
WITH RESPECT TO NAME TAGS

The parties agree that no employee shall be required to wear a name tag with the employee's name, and that within ninety (90) days of ratification employees shall be issued number tags to replace name tags.

RATIONALE

For background and context, in December 2012, the Employer instituted a new policy (the Name Tag Policy) requiring BSOs and other staff to wear a name tag rather than their assigned badge number, as had been the practice until that point in time. The decision to convert from badge numbers to name tags was purported to be based on a need for improved customer service or "service excellence". The Employer also stated that the introduction of the name tags was done to bring the CBSA in line with related agencies. (Exhibit 88)

At the time the Name Tag Policy was introduced, several employees exercised their right to refuse unsafe work under the *Code*. A Health and Safety Officer from the Labour Program was assigned to investigate these work refusals and made a finding of no danger but issued a direction that preventative measures be taken with respect to the

hazard caused by the introduction of name tags. The Employer did appeal the direction to take preventative measures which was unsuccessful.[108]

Since 2012, the Name Tag Policy remains the subject of numerous grievances, security incidences reports, and hazardous occurrences reports, and most recently an appeal (of a decision related to a Name Tag Policy complaint) at the Occupational Health and Safety Tribunal of Canada (Exhibit 89).

The fundamental issue is that the nature of BSO work is such that name tags put the officers at risk. BSO's working at land borders and in airports interact with thousands of individuals are responsible for law enforcement, including the breaking up of contraband rings – weapons, illegal drugs, human traffickers, to provide some examples. Many officers live in small communities, and there have been occasions where officers with unique last names have been tracked down via individuals researching last name and intimidated, even targeted. The Union has in discussion with CBSA suggested first name only, badge numbers, other means of identification. Yet despite the risk posed by the current practice to officers, the employer has refused.

For some background on the most recent complaint that now is before the Tribunal, in August 2018 an ATIP request led to the release of the first and last name, security clearance level, classification and work location for all staff employed by the Canada Border Services Agency (CBSA). This information was posted to Twitter by an account with the Twitter username @cdnati (ATIP bot). Employees of the CBSA became aware of this release of information in September 2018 and a number of Border Services Officers (BSOs) instituted work refusals on October 1-3, 2018, including employees at the Ambassador Bridge Port of Entry (POE). (Exhibit 90)

The written statements from the Employees exercising the right to refuse unsafe work make it clear that the nametags have always been viewed as a hazard in the workplace

[108] 2014 Hamel Decision

and the release of information on Twitter only served to increase the availability of identifying information to ill-intentioned travelers.

The Employer's *Refusal to Work Investigation Report* for the work refusals at the Ambassador Bridge concluded with a finding of "no danger". The Employees disagreed with the Employer's finding and continued the work refusal resulting in referral to Ministerial Delegate. One day after appointment, the delegate concluded a danger did not exist. This decision was appealed pursuant to subsection 129(7) of the *Canada Labour Code (*the *Code*).

The Union (the Appellant) asked that the Tribunal find that the wearing of the name tag coupled with the release of information via ATIP constitutes a danger under the *Code.* To be clear, it is the Appellant's position that the use of name tags presents a danger on its own, the release of additional information via ATIP contributes to the danger. As a result of the finding of danger, the Employer should be ordered to revert to the use of badge numbers pursuant to the hierarchy of controls outlined at section 122.2 of the *Code.*

It is abundantly clear given these facts that clear language in the parties' collective agreement on this issue is necessary. The Union therefore respectfully requests that the Commission include this proposed MOU in its recommendations.

ARTICLE 59
ALLOWANCES – DOG HANDLERS

PSAC PROPOSAL

59.02 Dog handlers' allowance

When an employee is required to handle a trained detector dog during a shift, and in recognition of the duties associated with control, care and maintenance of the detector dog at all times, the employee shall be paid an allowance of ~~one~~ **two** ($**2**) dollar per on-duty hour.

RATIONALE

The Detector Dog Service (DDS) of the Canada Border Services Agency (CBSA) was established in 1978 to assist with front-line inspections. CBSA currently has 72 detector dog teams located across Canada, serving both traveler and commercial operations. Specialized dogs are trained in the detection of narcotics, firearms, currency, and agriculture products. The Detector Dog Service plays a key role in the detection of prohibited or regulated goods entering the country and in assisting the CBSA to fulfil its border protection mandate.

Detector dog teams receive intensive training at the CBSA's Learning Centre in Rigaud, Quebec. During the 10-week basic training, dog handlers learn how to care for, maintain and train their dogs. After the initial training course, the dog handler must maintain a training schedule to keep the dog working at a peak efficiency level.

Dog handlers may be required to be on call 24 hours a day and must be willing to travel to other locations on short notice. They must also be dedicated to their dogs, while both on- and off- duty. Indeed, handlers are assigned a specific dog.

What's more, dog handlers are regular Border Services Officers. They must also be dedicated to their dogs, while on-duty and, on occasion, when off- duty as well. Indeed,

handlers are assigned a specific dog, and there are situations where the off-duty dog at lives at the handler's home. Although most of the costs associated with the care of the dog are assume by CBSA, the dog handlers receive insufficient compensation for the fact that they must take care of the dog 24/7.

The following table (Table 16) provides example of Dog Handler Allowances in other major law enforcement agencies in Canada.

Table 16: Dog Handler Allowances

Organizations	Dog Handler Allowance
Corrections Canada (CX)	($4.00) for each period in which the employee handles the dog for a minimum of one (1) hour for each four (4) hours period of a shift. [43.01]
Ottawa Metro	$1000 per year
Sûreté du Québec	As of 1 April 2021: $233 per month for dog master + 50% of the monthly allowance for the 2nd dog
Metro Toronto	$75 per month
Saskatoon	1100$ per year
Vancouver Metro	Dog Handler: 4% of 1st Class Monthly rate
City of Winnipeg	$600 per year
York Regional Police	6-12 service in the unit – 2% of 1st Class Constable Salary; 12+ months service in the unit – 6.75% of first-class salary.
Calgary Police	$650 per year
Ontario Provincial Police	A First-Class Constable, Sergeant or Staff Sergeant who is assigned to one of the following units, branches, or positions as of January 1, 2012 shall be entitled to an annual premium at the rate of two percent (2%) of their base rate effective January 1, 2012 and upon completion of twelve (12) months in the position, an annual premium at the rate of four percent (4%) of their base rate effective January 1, 2013:
Peel Regional Police	Operational members of the Tactical and Rescue Unit and Canine Unit shall be entitled to receive a speciality premium of five percent (5%) of the First-Class Constable salary for the period of their assignment to the Unit.

(Exhibit 91)

Introduced in the last round of bargaining, the allowance does not reflect the norms of the law enforcement community. As a result, the Union is proposing a modest increase of one additional dollar per on-duty hour.

Dog handlers are passionate about the work they perform, and they take great pride in the role that they play at CBSA. They receive special training and have responsibilities that go beyond standard BSO duties. They should be fairly compensated for the work they do and the vital service they provide Canadians. Allowances for dog handlers are common in the broader law enforcement community in Canada. Treasury Board has already agreed to it for other workers in its employ. It is for these reasons that the Union respectfully requests that its proposal for a dog handler's allowance be included in the Commission's recommendation.

ARTICLE 59
NEW ALLOWANCES – PLAIN CLOTHES

PSAC PROPOSAL

Plain Clothes

59.xx Employees required to provide and wear ordinary clothing as part of their duties, shall be reimbursed by the Employer for expenses incurred in the purchase of such clothing, to a maximum of one-thousand, one hundred and twenty-five dollars ($1,125.00) per annum, upon presentation of the necessary receipts. If an employee performs such duties for less than a calendar year, but for a period or periods totaling one calendar month (30 days) or more in that year, the employee shall be entitled to reimbursement of a proportionate part of the expenses in the same ratio that the employee's time so spent bears to that calendar year.

59.xx Each employee entitled to the expenses under Section xx.01 shall submit a claim once annually in January for the preceding year to be reimbursed not later than the month of February, next following.

RATIONALE

There are employees in the FB bargaining unit that are required to wear regular (plain) clothes as part of their duties. At present these employees are required to purchase these clothes out of their own pocket. This practice is highly unusual in the context of Canadian law enforcement, in that every major law enforcement agency in Canada provides an allowance to employees required to work in plain clothes as part of their duties.

For example, Intelligence Officers and Investigators often undertake field operations that require surveillance (Exhibit 92). CBSA has also recently begun to train Inland Enforcement Officers to undertake surveillance activities. Surveillance work often requires that employees wear particular plain clothes, clothes that have to be purchased in order for surveillance activities to be conducted effectively. In short, these employees are sometimes required to ‘blend in’ to certain settings in order to apprehend suspects

or to observe potential illegal activity. Furthermore, it is common for these employees to be required to purchase loose clothing in order to accommodate the equipment that an Officer is required to wear such as a safety vest and a firearm, equipment that sometimes must be concealed and therefore worn underneath their clothes. These clothes are obviously not the type of clothing these employees would purchase for civilian use.

Intelligence Officers and Investigators are also required to provide expert testimony before courts of law or administrative tribunals. Intelligence Officers are required to wear a suit for those occasions where they are asked to testify. Unlike other major law enforcement agencies in Canada these employees are required to pay out of pocket for those suits without any specific compensation or allowances.

The following table (**Table 17**) provides example of Plain Clothes Allowance in other major law enforcement agencies in Canada. Of note, recent police service settlements including the SQ, Edmonton, City of Montreal, Metro Toronto, Peel, Charlottetown, and Winnipeg (indexed to CPI) increased this allowance.

Table 17: Plain Clothes Allowance

Organizations	Plain Clothes Allowance
RCMP	Male: $2041.91 per year or $7.34 per day Female: $2133.65 per year or $7.63 per day
Corrections Canada (CX)	$600 per year
Royal NFLD Constabulary	$1200 per year with receipts
Saint John, NB	$1500 per year with receipts –Includes dry cleaning fees or $5.77/day
Ottawa Metro	$1025 per year
Ontario Provincial Police	$1250 per year with receipt – Includes dry cleaning fees
Sûreté du Québec	$7.30 per day working in plain clothes at the department's request

City of Edmonton	$1285 per year
Halifax Metro	$1600 per year
City of Montréal	2.5% of sergeant-detective salary with receipts ($2414 based on the salary effective Dec 31, 2021.
Metro Toronto	$1225 per year with receipts –Can carry over unused balance into next year
Peel Region	$1350 per year with receipts
Calgary Metro	$1000 per year
Saskatoon	$1050 per year
Vancouver Metro	$1070 per year or $4.05 per day
City of Winnipeg	$1157.03 per year subject to changes in CPI
Charlottetown Police	$1350 per year

(Exhibit 93)

With respect to external comparators, the Union's proposal for plain clothes allowance is taken verbatim from the collective agreement currently in effect for officers working at the Ontario Provincial Police. (Exhibit 94)

In addition to external comparators, a plain clothes allowance has also been established within the federal public administration, in that House of Commons Constables also have access to such an allowance. (Exhibit 95). Other examples with respect to employers providing either clothing or allowances for the purchase of clothing required for employees to perform their duties include the Senate, Canada Post, and the National Arts Centre (Exhibit 96).

In January 2021, results of an Access to Information Act request disclosed (between 2017-2020) expense and/or reimbursement claims filed by, or on the behalf of, managers and supervisors at the Canadian Border Services Agency for non-uniform expenses related to clothing and apparel showed an array of expenses reimbursements for uniform or apparel expenses for employees (excluding Border Service Officers). In the Prairies region, for example, thousands of dollars have been reimbursed to

management positions (superintendents, chiefs, assistant directors, and directors). (Exhibit 97).

The Union submits that it is both unreasonable and unfair for “plain clothes” officers to be required to purchase clothing that is necessary for them to effectively perform their duties. Every other major law enforcement agency in Canada has recognized this fact and as a consequence a plain clothes allowance is standard in the industry. CBSA provides uniformed officers with uniforms. It should also provide non-uniformed officers with remuneration so that they too can have the clothes that they need to perform their duties.

Furthermore, the aforementioned ATIP disclosure also demonstrates that there is a double standard at CBSA, in that such items are being paid for by the employer now for managerial and supervisory staff at CBSA.

Given that a precedent has already been set at CBSA with uniformed officers being provided the necessary clothing, given that a plain clothes allowance is standard for workers performing the same duties elsewhere in the Canadian labour market, and given that there is already significant precedent elsewhere in the federal public sector, the Union respectfully requests that the Commission include its proposal in its recommendation.

ARTICLE 59
NEW ALLOWANCES – DRY CLEANING

PSAC PROPOSAL

59.xx Dry Cleaning allowance

The Employer shall reimburse up to a maximum of one-thousand, one hundred and twenty-five dollars ($1,125.00) per annum for expenses associated with the cleaning of uniforms, upon presentation of the necessary receipts.

RATIONALE

Most employees in the FB bargaining unit are required to wear a uniform when on duty. There are costs associated with the cleaning of these uniforms, as dry cleaning is necessary, and the CBSA does not cover costs associated with the dry cleaning of uniforms.

What the Union is proposing is that the language contained in the collective agreement between the Ontario Provincial Police Association and the Province of Ontario be included in the parties' collective agreement for the FB group (Exhibit 98). Like OPP officers, Border Services Officers are required to wear uniforms when on duty. Like OPP officers, Border Services Officers must dry clean their uniforms. The Union submits that if one of the largest law enforcement agencies in Canada provides its officers with reimbursement for the dry cleaning of its uniforms, there is no reason employees should be obligated to absorb such costs out of their own pocket.

The dollar amount is consistent with what the Union is proposing for plain-clothed officers, which is also consistent with the practice for the Ontario Provincial Police. Furthermore, the Union notes that the City of Edmonton provides its officers with a dry-cleaning allowance, as do the cities of Toronto, Montreal, Vancouver, and Winnipeg.

Given that such reimbursement is standard for employees engaged in similar occupations in the broader public sector, the Union respectfully requests that its proposals be included in the Commission’s recommendation.

ARTICLE 59

NEW ALLOWANCES – ESCORTED REMOVALS PREMIUM

PSAC PROPOSAL

59.xx Escorted Removals Premium

When an employee is assigned to escort a person from Canada, the employee shall be paid a seven-dollar ($7.00) premium for each hour worked on the assignment, provided that the assignment requires that the employee work more than 7.5 contiguous hours.

RATIONALE

Commensurate with the enforcement of the *Immigration and Refugee Protection Act*, the Canada Border Services Agency (CBSA) may remove from Canada any person who has been issued a removal order for violating the Act. Removal orders are issued when violation of the Act is confirmed. Depending on the type of removal order required, the order is issued either by a CBSA officer or by the Immigration and Refugee Board of Canada.

Individuals who are removed from Canada are removed because they have been deemed as posing a threat to the security of Canada. This may include individuals that have broken the law; demonstrated involvement in organized crime or crimes against humanity; failed as refugee claimants; or be otherwise inadmissible to Canada (due to such reasons as expired visas, misrepresentation of identity including marriages of convenience and fraudulent documents).

CBSA will assign an escort if there is concern that the person in question will not obey the removal order or if an escort is required to facilitate the removal. If there are any health concerns, a medical officer may assist the CBSA in escorting the person out of the country.

Bargaining unit employees – namely Inland Enforcement Officers – carry out detentions and removals. In some cases, a medical officer may assist them.

The performance of these duties can require that employees work extremely long hours, consecutively. To provide an example, an employee may be required to escort an individual from Vancouver, British Columbia to Johannesburg, South Africa. This trip would require that an employee work more than 24 hours. Yet Inland Enforcement personnel are not shift workers as they are regularly scheduled in conformity with 25.06 of the collective agreement. Nor do such employees access late hour premium as they do not meet the criteria set out in 25.12 (b). In short, there is no additional compensation provided to employees performing an escorted removal, except for overtime.

These assignments can be grueling. They require that employees work extremely long hours, and in some cases, employees must be away from Canada for a considerable amount of time – several days in some instances. There are situations where these employees are required to travel to parts of the world that are unstable, and in all of these cases the employees are unarmed when escorting what are in some cases dangerous criminals as they cannot bring tools or weapons on airplanes.

The Union submits that employees performing these duties should be provided additional remuneration and is proposing that employees performing international escorts be paid a premium of $7.00 an hour for the duration of the assignment. A premium of $7.00 an hour is consistent with what the parties have agreed to for other day workers that are required to work hours beyond 6 pm but no later than 9 pm. If a premium of $7.00 an hour can be paid to day workers required to work between 6 and 9 pm, surely the same premium can be applied to workers who are required to work in some cases 24 hours or more past 6 pm. It is remuneration that is entirely fair and reasonable considering the conditions surrounding the performance of international escorts.

In addition, it is important to note that:

> "The CBSA is considering potential regulatory amendments to increase the costs to be recovered from returning foreign nationals removed at the government's expense. The current regulatory framework described in section 243 of the IRPR has not been updated in over 25 years; it does not align with today's costs nor leverage technology to ensure that outstanding removal costs owed by foreign nationals are recovered prior to receiving authorization to return to Canada.
>
> Paragraph 53(g) of the IRPA provides the authority to create regulations in respect to the "financial obligations that may be imposed with respect to a removal order," while paragraph 145(1)(c) of the IRPA establishes that "costs incurred in removing a prescribed foreign national from Canada" are considered debts to the Crown that may be recovered at any time.
>
> Currently, the removal costs that must be repaid are:
> - $750 for foreign nationals removed to the United States or St. Pierre and Miquelon; and
> - $1,500 for foreign nationals removed to any other country.
>
> The CBSA is considering a new cost recovery structure that is based on actual average enforcement expenditures incurred by the CBSA. Amounts recovered would be:
> - $3,250 from foreign nationals who were removed without escort;
> - $10,900 from foreign nationals who were removed under escort; and
> - $1,300 from foreign nationals who were detained for removal.
>
> This amounts to a total of $4,550 for detained unescorted removals or $12,200 for escorted detained removals.
>
> In accordance with subsection 17(1) of the *Service Fees Act*, the CBSA is considering applying a regulatory mechanism such that the costs to be recovered would be subject to an automatic annual fee adjustment. This would be based on the Consumer Price Index (CPI) that would reflect the percentage change over 12 months in the April All-items CPI for Canada, as published by Statistics Canada under the *Statistics Act*, for the previous fiscal year. The annual application of the CPI to the removal costs would maintain alignment between the regulatory cost recovery scheme and the CBSA's actual enforcement expenditures."[109]

[109] Proposed regulatory amendments to modernize the existing framework governing the collection and recovery of removal costs from foreign nationals removed from Canada at Her Majesty's expense in accordance with section 243 of the Immigration and Refugee Protection Regulations: https://www.cbsa-asfc.gc.ca/agency-agence/consult/consultations/2020-2-eng.html (Exhibit 99)

As new consideration of a cost recovery structure for removals amounts to a very significant fee adjustment, this is the opportune time to introduce the escorted removals premium.

Considering this, the Union respectfully requests that its proposal be included in the Commission's recommendation.

ARTICLE 59
NEW ALLOWANCES –
FIRING RANGE FEES REIMBURSEMENT
&
FIREARM PRACTICE TIME

PSAC PROPOSAL

59.xx Firing Range Fees Reimbursement

Upon receipt, the Employer shall reimburse employees for all fees associated with access to firing ranges and storage of firearms.

PSAC PROPOSAL (NEW APPENDIX)

APPENDIX XX
FIREARM PRACTICE TIME

xx.01 a) An employee that is required to carry a firearm shall be scheduled at least two (2) shifts per year for duty firearm practice. Such shifts shall be scheduled consistent with the employee's regular hours of work.

b) Any travel associated with a) above shall be subject to the National Joint Council Travel Directive.

RATIONALE

In the case of both these Union proposals, the Union is seeking changes that reflect both provisions that are standard for law enforcement officers across Canada, and skills maintenance that is essential to the employment of a vast majority of members of the FB bargaining unit.

As law enforcement personnel, a majority of employees in the FB bargaining unit are required to undergo firearm recertification on an annual basis. This is true of Border

Services Officers, Inland Enforcement Officers, Investigations Officers, and Intelligence Officers.

The CBSA's position is that successful completion firearm certification is necessary for employees to perform their duties.

The agency up until 2013 provided employees with two paid sessions per calendar year for firearm practice. The reason provided by the agency at the time was financial constraints due to cutbacks under the Harper Government. Because the paid firearm practice time was not covered by the parties' collective agreement, the Union was unable to grieve the change. What the Union is proposing is to both reinstate and enshrine in the collective agreement the paid firearm practice time that was previously agency policy, as the current practices and policies see employees *on their own time*, and *at their own expense*, undergoing activities required to maintain standards set by CBSA.

At present off-duty firearm practice is an activity that permits armed officers to practice shooting on their own. As a condition of employment, Border Services Officers, Inland Enforcement, Investigations and Intelligence Officers are expected to recertify firearm proficiency on an annual basis. In, short, there is an expectation at CBSA that officers be proficient with a firearm and demonstrate this proficiency on a regular basis.

Despite this expectation on the part of the Employer, current protocols related to off-duty firearm practice hold that officers will not be reimbursed for any fees, membership costs, or any other expenses associated with off-duty firearm practice. The Agency will provide officers with CBSA silhouette targets and up to 1000 rounds of training ammunition, which will be available to each officer annually in 200 round allotments per practice session. In many instances, to even engage in off-duty firearm practice, course must also be taken on your own time, usually a half to full day. As well, the ranges are often located a considerable distance from work locations where employees must pick-up their own practice ammunition and supplies. As the current policy states, officers will

not be compensated for any time spent during off-duty firearm practice activities (e.g. travel, range fees, etc.). The Union's proposal, however, views firing range fee reimbursement as a matter of fairness within and between regions (Exhibit 100). It is also a simple matter of fairness that the Employer provide time and reimbursement for costs associated for maintaining proficiency in what is an operational requirement.

Presently, only a CBSA-approved range facility may be used by officers wishing to conduct off-duty firearm practice, as specified in section 2.3.23(a) of the CBSA Standard Operating Procedures on Defensive Tactics Training. These facilities can be located by referring to the CBSA Approved Range List.

An analysis of range fees identified on the CBSA Approved Range List shows:

- 132 approved firing ranges
- 3 ranges (2 in the Atlantic; 1 in the Prairies regions) in which fees are determined via undisclosed MOU
- 7.6% charge no range fee
- At least one range states CBSA shoot free, but charges others range fees.
- Annual range membership fees (excluding all other fees): These fees vary between region, and not all ranges report fees (i.e., must contact them, no fee, or MOU). The most expensive average annual range membership fee is found in the Great Toronto Area at $262[110]; descending in order from there includes Northern Ontario: $182; Southern Ontario: $171; Quebec $139; Atlantic: $99; Pacific: $85; Prairies: $81.
- In addition to annual range membership fees, many ranges require various additional fees including initiation, handgun and holster safety course, and membership to a sport shooting organization.
- Daily rates: While pricing models vary widely, daily rate may also be charged on top of annual range membership fees with many ranges charging an Agency daily rate. The average daily rate listed was approximately $271. (Exhibit 101)

[110] Rounding to whole dollar figures.

With such variance in cost both within and between region (including firearm bans in some regions), where an employee lives should not be the determinant of how much an employee pays to engage in off-duty firearm practice—a program developed to provide officers with additional opportunities to prepare for their annual firearms re-certification. With respect to firearm practice time, the following law enforcement organizations, including two of the largest regional police service (aside from CBSA and the RCMP) offer clear examples in their respective collective agreements:

Ontario Provincial Police:

5.05 – Shift Premium

(b) Shift premium shall be paid only to employees working on a rotating shift or fixed off-shift basis and shall not apply to regular day workers who are required to work overtime. Also, fixed off-shift in-service training employees will receive the shift premium while participating in block/firearms training.

Sûreté de Québec:

5.11 Session régulière de maniement des armes

a) Une session régulière de maniement des armes de plus d'une journée constitue une activité de formation et de développement.

b) Une session régulière de maniement des armes d'une durée de moins d'une (1) journée ne constitue pas une activité de formation et de développement.

Ottawa Police Service:

12.2 – Hours of Work

Block Training:

- Block training will take place on the members regularly scheduled days of work as per Attachment #2
- There shall be three (3) training days per member, per year of a duration of ten hours and forty-five (10:45) each, scheduled on Monday, Tuesday, and the following Wednesday of the rotation
- The day scheduled for the Use of Force Requalification will be scheduled by the employer through the Professional Development Centre
- Meal breaks for Training Days are of a duration of one (I) hour. (Exhibit 102)

The Union submits that the status quo is patently unfair on the issue of firearm practice time. Employees are undergoing these activities on their own time and largely at their own expense, and yet the CBSA has made the proficient handling of a firearm a necessary skill for performing the duties of jobs in which a significant majority of the bargaining unit are employed.

In light of these facts, the Union respectfully requests that the Commission include its firing range fee reimbursement and firearm practice time proposals in its recommendations.

ARTICLE 59
ALLOWANCES – FITNESS/WELLNESS

Fitness/Wellness Allowance

xx.01 The Employer shall provide all employees with a monthly allowance of $50.00 for the maintaining of a membership at a gym or fitness facility, except where the Employer provides an adequate fitness facility free of charge on site.

RATIONALE

As law enforcement personnel, most employees in the FB bargaining unit are required to meet certain physical standards as part of their employment (Exhibit 103). This is true of Border Services Officers, Inland Enforcement Officers, and Intelligence Officers. When first evaluated for the job upon application new recruits are submitted to rigorous physical testing, and every three years after initial date of hire employees are required to undergo Control Defence Tactics training evaluation, wherein employees must successfully demonstrate an ability to perform all use of force procedures consistent with their position.

In addition to the rigorous physical standards applied to front-line staff at CBSA, these same employees are required to undergo firearm recertification on an annual basis. The CBSA's position is that successful completion of Control Defence Tactics training and firearm certification are necessary for employees to perform their duties, and those who are unsuccessful are subject to accommodation.

In recognition of the importance of maintaining physical standards, CBSA has in several its offices provided access to fitness equipment on site. Some examples of these include ports in Coutts, Alberta and Osoyoos, British Columbia. CBSA has also negotiated a discount rate with Good Life fitness centres. Thus, clearly the employer has acknowledged that regular fitness training is needed to meet the standards set by the agency for its front-line employees. However, what the agency has in place amounts

effectively to half-measures and inconsistency in application of access to fitness training opportunities across Canada.

As previously stated, some ports have fitness facilities, and some do not. Thus, an employee working in the port of Osoyoos has access to fitness equipment while an employee working at the Windsor Tunnel does not.

With respect to membership at Good Life fitness centres, employees must still pay out of pocket despite the group rate, and Good Life does not operate in every location where CBSA ports can be found. What the Union is proposing is simple: That there be a consistency across the board in terms of access to fitness training across the country for all employees, and that the employer either make fitness training equipment available to employees, or that an allowance be provided for membership in a fitness training centre.

The Union notes that such an arrangement is common in cadet recruiting and benefit entitlements in the law enforcement community. For example, the metro police forces in Edmonton, Ottawa, Toronto, Saskatoon, Calgary, Winnipeg, York Regional, Vancouver, and Peel Regional all provide on-site fitness training facilities to officers. In the case of the RCMP fitness facilities are made available at several locations, while in the case of the Ontario Provincial Police, a $90.00 a year allowance is provided on top of the provision of on-site fitness training equipment at several locations. Thus, what the Union is seeking here is commonplace in law enforcement.

Police Service	**Health and Wellness Benefits**
Ottawa	Access to health and fitness facilities[111]
Calgary	Wellness Account: $400; gyms in the headquarter buildings as well as work facilities in all the district offices.[112]
Toronto	On-site fitness facilities (noted in Board policies appended in

[111] https://www.ottawapolice.ca/en/careers-and-opportunities/sworn-salary-and-benefits.aspx
[112] https://www.calgary.ca/cps/working-for-calgary-police/civilian-careers/before-you-apply-to-the-calgary-police-service.html

	collective agreement).[113]
Saskatoon	On-site fitness facilities[114]
Winnipeg	Employee Wellness Program, including access to gym facilities[115]
York Regional	Employees working at York Regional Police's head office can stay in shape with free access to a 24/7 onsite fitness facility.[116]
Edmonton	Work-out facilities – various locations throughout the city (depending on location facilities include gymnasium, weight room, racquetball court and running track).[117]
Peel Regional	These include wellness protection for you and your family, fitness facilities, and a variety of programs. Benefits begin six months after starting employment[118]
OPP	On-site fitness training equipment at several locations.
Vancouver	Access to gym facilities[119]
RNC	Complete RNC headquarters development (p. 26): Additionally, the building will house a new gym and wellness center.[120]
RCMP	As of 2012 (in the RCMP Annual Compensation Report), the RCMP indicated that yes, its officers had access to an on-site recreation or fitness facility, but that it was not universal.[121]
Montreal	As of 2012 in the RCMP Annual Compensation Report), yes, but only at four precincts.
Halifax	As of 2012 (in the RCMP Annual Compensation Report), yes there was access to recreation or fitness facilities.

(Exhibit 104)

The CBSA has put stringent standards in place for its front-line employees with respect to physical fitness standards. The agency has acknowledged the need for employees to

[113] http://www.torontopolice.on.ca/careers/uni_benefits.php
[114] https://saskatoonpolice.ca/recruiting/salary/
[115] https://www.winnipeg.ca/police/policerecruiting/benefits.stm
[116] https://www.blueline.ca/york-regional-police-one-of-canadas-top-employers-for-young-people-for-2020/
[117] https://www.edmontonpolice.ca/JoinEPS/WorkingAsACivilian/BenefitsofEPS
[118] https://www.peelpolice.ca/en/work-with-us/become-an-officer.aspx?_mid_=8781
[119] https://joinvpd.ca/special-municipal-constable/
[120] https://www.rnc.gov.nl.ca/wp-content/uploads/2017/03/RNC-Activities-Report-2014-2015-FINAL-WEB.pdf
[121] 2012 RCMP Annual Compensation Report, p.98. (Exhibit 105)

engage in activities on a regular basis in order to ensure that these standards can be met – either via offering group rate at Good Life fitness centres, on-site fitness equipment in other cases, and in the past paid firearm practice time. Thus, what the Union is proposing in these areas is clearly not inconsistent with the priorities of the agency. What is absent is consistent and fair application, and protection in the parties' agreement ensuring that these practices are expanded upon and made accessible. Lastly, this proposal is not precedent setting as making resources available for fitness training is commonplace in collective agreements and benefit entitlements covering law enforcement personnel.

Considering these facts, the Union respectfully requests that the Commission include its proposals concerning these matters in its recommendation.

NEW
ALTERNATIVE WORK ARRANGEMENTS

PSAC PROPOSAL

The Employer shall not unreasonably deny employee requests to carry out regularly assigned work duties away from the Employer's premises.

RATIONALE

In 1999 the Treasury Board introduced its initial Telework Policy. The policy stated that its objective is to "allow employees to work at alternative locations, thereby achieving a better balance between their work and personal lives, while continuing to contribute to the attainment of organizational goals." It also stated that: "the employer recognizes the opportunities that flexible working arrangements such as the telework option can present, and encourages departments to implement telework arrangements where it is economically and operationally feasible to do so, and in a fair, equitable and transparent manner." Telework is defined as "a flexible work arrangement whereby employees have approval to carry out some or all of their work duties at a telework place", and a telework place is defined as an "alternative location where the employee is permitted to carry out the work otherwise performed at or from their designated workplace." [122]

Telework became common in non-uniformed work environments at Canada Customs and Revenue Agency (CCRA – the predecessor to CBSA) soon after the policy was introduced, particularly in Trade Compliance and at CBSA headquarters in Ottawa. Indeed, in some regions the practice had existed before the introduction of the policy. For Trade Compliance employees working in such highly urbanized areas as Toronto and Montreal, it came to be recognized by management and employees as being eminently practical, as employees working in Trade Compliance regularly perform their duties off site and the CBSA Trade Compliance offices in both cities are found in the downtown core, rendering them difficult to access at certain times of the day. For

[122] Telework Policy. 1999: https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=12559&section=html

example, in Toronto it became the norm for employees to visit sites and perform verifications in Mississauga, Scarborough or the northwest Toronto and then return to their place of residence to complete the associated paperwork and documentation, rather than spend up to 2 hours in traffic simply to go to and from the office at One Front St. In fact, CBSA in the GTA in 2000 and 2001 actively promoted telework when recruiting to fill Trade Compliance positions. In 2004 there were well over 150 employees on telework in the GTA alone, with another 117 officers having expressed interest.

In the late 2010's CBSA began unilaterally revoking the Telework Policy in certain regions. It began in Toronto and later spread to Quebec and Alberta. At the outset of this round of negotiations in 2018, there were to the Union's knowledge no permanent, on-going telework arrangements in place for Trade Compliance officers anywhere outside of British Columbia, with the exception of employees requiring medical accommodation.

In the 2009 round of bargaining the Union raised the issue of telework from the outset, and while consensus was never reached on the application of the policy during negotiations, the parties agreed to strike a joint committee to discuss the application of the Telework Policy with CBSA's Trade Compliance Division. That joint committee met often in the years immediately following. A number of conference calls of the committee representatives were also held. While there was considerable discussion, CBSA held to its position that telework arrangements are to be granted on a case by case basis, at management's discretion. It is for this reason that the Union has again raised this issue in this round of negotiations. In effect, until this round of bargaining began in 2018, nothing has changed since management ended the practice years before.

The benefits of telework are well documented. For example, a 2010 study conducted by the Government of Canada states that:

> *Telework offers significant benefits to individual employees, their employers and their communities. There are also challenges to successful telework, but there are few that cannot be overcome through careful program planning and implementation. Canadian governments have been less proactive in enabling and promoting telework than those in the United States. There are supportive initiatives in place in several Canadian municipalities, with the City of Calgary as a leading example. Non-governmental organizations are also active in raising awareness of telework benefits and best practices among Canadian employers. One Canadian company has emerged as a world leader in telework. Nortel Networks has made flexible work arrangements a priority, and has reported significant benefits in terms of employee productivity and real estate efficiencies.* (Exhibit 106)

The same study then goes on to list a number of benefits for employees, employers and communities. These include:

- Better work-life balance and productivity
- Time savings (avoiding a commute allows for time that can be better used for employee or corporate benefit)
- Better employment opportunities for persons with disabilities
- Better employment opportunities for residents of remote communities
- Greater employee motivation and productivity
- Enhanced employee recruitment and retention
- Reduced need for office space and parking spaces
- Reduced employee relocation needs
- Reduced travel demands and vehicular emissions
- Flexibility for responding to security, energy, weather or construction events
- Improved ability to keep or attract residents to rural or satellite communities.

The study then goes on to examine a case study of Nortel Networks, where the company has actively encouraged telework, and where approximately 8% of employees are full time teleworkers, and 80% of employees work from somewhere other than their regular desk occasionally. The results of this have been significant:

- Increased productivity by an estimated 15% among teleworkers, with 94% reporting 15% to 20% greater productivity

- 11% of teleworkers more satisfied than the overall employee population
- Teleworkers save Nortel Networks approximately $9,000 annually in real estate costs.

The study also referred to a number of challenges posed by telework, from reduced workplace exposure to reduced physical activities for employees to security and confidentiality. However, a number of strategies are proposed to mitigate these potential concerns, and the government's study ultimately concludes that "telework offers few challenges that cannot be addressed through appropriate planning and implementation strategies".

Thus, it is clear that the Government of Canada has in the past recognized the benefits of telework for employees, employers and communities.

Telework was widely practiced and encouraged for non-uniformed staff many years at CCRA and later CBSA. It was unilaterally revoked in most parts of the country and is now approved by management on an inconsistent basis. This has led to frustration in affected CBSA workplaces and discord between the parties since the first revocation took place. The Employer has provided no rational reason as to why telework cannot be applied equitably across the country. The government has produced at least one study that clearly demonstrates that telework is a practice that is on balance beneficial to employees, employers and communities as a whole. Indeed, the Employer's own policy states that "it recognizes the opportunities that flexible working arrangements such as telework can present", and that it "encourages departments to implement telework arrangements" in a "fair, equitable and transparent manner". The Union submits that this is exactly what the Union's proposal would accomplish.

In early 2019 the CBSA announced that it was introducing a new Telework Policy. In negotiations the employer provided a copy of the policy to the Union. The Union reviewed the policy and indicated that, despite the fact that the new policy left many serious concerns unaddressed and huge problems remained, the Union would not

oppose the new policy as it represented from the Union's perspective a slight improvement over the previous one. (Exhibit 107)

In April 2020 the Treasury Board introduced its Directive on Telework. The policy states that its objective is to:

> 3.2. In addition to the expected results indicated in section 3 of the *Policy on People Management*, the expected results of this directive are as follows:
>
> - 3.2.1. Employees are able to reduce stress, achieve work–life balance and meet performance expectations;
> - 3.2.2. Telework is used where appropriate, including as a means to ensure an inclusive public service and a safe and healthy work environment where employees have access to flexible work arrangements; and
> - 3.2.3. The public service contributes to reducing emissions from transportation, traffic congestion and air pollution, in accordance with the *Greening Government Strategy*.[123]

The objectives indicated in section 3 of the *Policy on People Management* apply to this directive:

> - The objective of this policy is a high-performing workforce that ensures good governance and service to Canadians, and that embodies public service values, such as respect, integrity, stewardship, and excellence in its actions and decisions.
>
> 3.2. The expected results of this policy are as follows:
>
> - 3.2.1. The core public administration attracts, develops, and retains a talented, representative and diverse workforce, able to serve the public in both official languages;
> - 3.2.2. The work environment is healthy, safe, accessible, respectful, fair, and modern;
> - 3.2.3. The workforce upholds the values of the public sector;
> - 3.2.4. The workforce is well organized and well managed to meet business requirements; and

[123] Directive on Telework: https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=32636

- 3.2.5. People management practices optimize delegated authorities.[124]

On August 17, 2020, CBSA introduced its own CBSA Interim Partial Telework Agreement (IPTA): Arrangement to Work from a Designated Telework Location and From a CBSA Workplace Location During the Pandemic (Exhibit 108).

It is important to note that while the COVID-19 pandemic catalysed the introducing and updating of telework and alternative work arrangements provisions at CBSA, problems related to this issue have been longstanding. There is no indication whatsoever that these problems will not return once the pandemic is over. Indeed, the Union fully expects these problems to return given the parties' history with this issue.

The Unions submits that with the 2020 TBS directive on telework introduced and CBSA's Arrangement to Work from a Designated Telework Location and From a CBSA Workplace Location During the Pandemic, this is the perfect opportunity to introduce alternative work arrangement language into the collective agreement. Thus, the Union respectfully requests that its proposal concerning telework be included in the Commission's recommendation.

[124] Policy on People Management: https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=32621

APPENDIX XX

MEDICAL APPOINTMENTS

PSAC PROPOSAL

NEW ARTICLE

MEDICAL APPOINTMENTS

Medical Certificate

XX.02 In all cases, a medical certificate provided by a legally qualified medical practitioner shall be considered as meeting the requirements of paragraph 35.02(a).

XX.03 When an employee is asked to provide a medical certificate by the Employer, the employee shall be reimbursed by the Employer for all costs associated with obtaining the certificate. Employees required to provide a medical certificate shall also be granted leave with pay for all time associated with the obtaining of said certificate.

RATIONALE

The language contained in Article 35 of the parties' current collective agreement provides the Employer with excessive and unnecessary flexibility. For example, as a result of the language in the current 35.02 (a), certain CBSA managers have taken the position that a medical certificate from a legally-qualified medical practitioner is insufficient proof of employee illness, and that instead employees must visit the proverbial 'company doctor' (Health Canada) to get a second opinion.

Treasury Board has agreed to language that would protect against Employer abuses in this regard. For example, the Treasury Board agreement covering Corrections Canada workers states:

> *A statement signed by the employee stating that because of illness or injury he or she was unable to perform his or her duties, shall, when delivered to the Employer, be considered as meeting the requirements of paragraph 31.02(a). However, the Employer may ask for a medical*

certificate from an employee, when the Employer has observed a pattern in the sick leave usage. (Exhibit 109)

Protections against excessive employer discretion can also be found in Treasury Board Occupation Health Evaluation Standard, where Health Canada is required to act based on analyses conducted by an employee's private physician, should the employee so choose. (Exhibit 110) Hence the Union's proposal reflects what is already Employer policy. Surely if an employee's private physician is sufficient for determining if an employee meets accommodation criteria under Treasury Board's occupational health standards, a certificate from an employee's private sufficient should more than suffice for meeting the requirements of CBSA management.

The reimbursement for medical certificates proposal reflects the need to ensure equitable treatment in terms of absorbing the extra costs associated with obtaining medical certificates. When medical certificates are requested by the Employer, the practice is to have the employee pay for the certificate. Thus, the employee pays a financial penalty for being sick. The new clause being proposed by the union would therefore ensure that employees who are to produce a certificate would not pay a penalty for being ill or for being chosen to produce verification. The language would also provide a disincentive for arbitrary requests for sick leave certificates for short absences. If an employee is sick with the flu for a day or two, the Union submits that it makes no sense to force them to tax an already overloaded health care system by presenting themselves to a medical practitioner for a note.

Similar language is contained in a number of PSAC collective agreements with federal employers, including the House of Commons, the Senate of Canada, Parliamentary Protective Service, International Development Research Centre, Statistical Survey Operations, the Canadian Museum of History, the Canadian Museum for Human Rights, and others. Paid medical certificates languages has been awarded in interest arbitration on more than one occasion by the FPSLREB (FPSLREB 485-HC-45). The reimbursement of medical certificate is also a frequent practice in the law enforcement community.

Conceptually-speaking, the Union's proposal with respect to the requiring a medical certificate reflects what has already been agreed to by the Employer for other federal workers employed with a law enforcement agency, as well as Treasury Board policy in the context of occupational health standards. With respect to reimbursement for medical certificates, the Union's proposal reflects what already exists elsewhere in the core public administration, and what has been awarded by the PSLRB a mere two years ago.

In light of these facts, the Union respectfully requests that the Commission include its proposals for Article 35 in its recommendation.

APPENDIX XX
WHISTLEBLOWING

PSAC PROPOSAL

NEW
WHISTLEBLOWING

No employee shall be disciplined or otherwise penalized, including but not limited to, demotion, suspension, dismissal, financial penalty, loss of accumulated service, advancement or opportunity in the public service, as a result of disclosing any wrongful act or omission, such as an offence against an Act of Parliament, an Act of a legislature of any province or any instrument issued under any such Act; an act or omission likely to cause a significant waste of public money; an act or omission likely to endanger public health or safety or the environment.

RATIONALE

The Union has on a number occasions in this brief highlighted the on-going problems with respect to what is commonly perceived on the part of the Union's membership as a heavy-handedness on the part of CBSA management. References to this phenomenon – and examples – have been provided in the introduction, as well as rationale provided for the Union's proposals for Article 17 Discipline and Article 20 Harassment and Abuse of Authority. As is the case with the proposals made for these aforementioned articles, the Union is also seeking protections for employees in the context of whistleblowing.

In negotiations the employer has taken the position that the Union's proposal is unnecessary as there is legislation protecting workers in the context of whistleblowing. The Union submits that the current legislation is woefully inadequate.

In 2007 the federal government enacted the Public Servants Disclosure Protection Act (PSDPA). The intent of this act was to protect most of the federal public service from reprisals for reporting wrongdoing. However, this Act has been extensively criticized as setting too many conditions on whistleblowers and for protecting wrongdoers. In

November 2006, the Senate passed 16 amendments to the PSDPA (as part of Bill C-2) but the government rejected all 15 substantive amendments. As of October 2017, the government had not yet responded the legally required review of its discredited whistleblower law that took place earlier this year.

Key Limitations of the PSDPA include:

- Going public strictly forbidden in most cases
- Narrow understanding of protected disclosures (i.e. when lawfully required/in good faith)
- Most complaints of reprisal are likely to be rejected
- 60 Day time limit to report retaliation
- Insufficient legal assistance
- Private sector information can't be used
- Access to information blocked forever
- Security agencies excluded
- Former public servants are untouchable and Commissioner cannot investigate misconduct
- Inadequate provisions for sanctions and corrective action

(A thorough list and discussion of all the limitations of the PSDPA can be found at: https://web.archive.org/web/20140605092603/http://fairwhistleblower.ca/psdpa/psdpa_critique.html)

The act reins whistleblowers in and restricts when, how and to who they may blow the whistle. According to the PSDPA, employees should make disclosures through internal mechanism and can only disclose a wrongdoing directly to the Commissioner in limited circumstance. A disclosure to the Commissioner can be made if the individual has "reasonable grounds" to believe that it would not be appropriate to disclose internally. This effectively shuts cases down. The act also does not ensure the right to disclose all illegality and misconduct. The definition of wrongdoing selectively omits large areas-such as Treasury Board policies, breaches of which spawned the Gomery Inquiry Public disclosures are only permitted when there is not sufficient time to make a protected disclosure and when there are *reasonable grounds to believe that the issue constitutes a serious offence under an Act of Parliament or of the legislature of a province; or constitutes an imminent risk of a substantial and specific danger to the life, health and*

safety of persons, or to the environment. If a public servant goes to the media with a disclosure of wrongdoing that doesn't meet one of these exceptional requirements, and they suffer reprisal action as a result, the Office cannot accept their complaint of reprisal as technically, they never made a disclosure under the *Act*. In addition, the Commissioner can refuse to deal with any disclosure if the Commissioner believes that the whistleblower is not acting in "good faith", or it is not in the "public interest" or any other "valid reason".

Also, the Act does not redress all forms of harassment, particularly passive retaliation, and the Legal Assistance provided to whistleblowers is completely inadequate with a limit set at $1500. Former Commissioner Christiane Ouimet failed to approve any whistleblower funds for legal assistance during her tenure, which effectively helped protect wrongdoers represented by government legal team. The Act carefully blocks all possible avenues to access any details of the Commissioner's investigation, putting these beyond the reach of access to information laws not just for a few years, but forever. In addition, tribunal hearings may be conducted in secret and need not be filed with the Federal Court. When whistleblower cases are settled by the Canadian government there is a draconian gag order attached which prevents whistleblowers from ever discussing the wrongdoing.

The findings of a recent study conducted jointly by the UK International Bar Association and the US Government Accountability Project fully confirm the Union's concerns with the legislation. Amongst the 37 countries surveyed, the study found that:

> "Canada, Lebanon and Norway's laws are tied for the world's weakest whistleblower protection laws, only matching one out of 20 criteria (set by the study)". (Exhibit 111)

The study described Canada's whistleblowing legislation as "utterly ineffective".
Another study, in this case conducted by Ryerson University's Centre for Free Expression, is equally damning of Canada's current whistleblowing framework, describing it as "deeply flawed" and "completely ineffective". (Exhibit 112)

As detailed in the Union's rationale on Abuse of Authority, a Fall 2019 OAG Report on Respect in the Workplace more one third (35%) of surveyed respondents (n = 6090) agreed that: "If an employee in my workplace was affected by harassment, discrimination, or violence from another employee or management, *the employee would fear reprisal as a result of making a complaint*." Similarly, as the 2014, 2017, 2018, and 2019 Public Service Surveys[125] clearly demonstrate—when asked if 'I feel I can initiate a formal recourse process without fear of reprisal'—the negative answers to this question remain alarming: totaled at 41% in 2019. CBSA staff have little faith in senior management and majority of front-line staff in particular have serious concerns about reprisals from CBSA management when raising concerns. And as has been demonstrated here, the current legislation concerning whistleblowing in the public service does not provide adequate protections. As a result, the Union submits that protections are needed in the parties' agreement for PSAC members at CBSA in the context of whistleblowing. Hence the Unions proposal to add language to the parties' agreement to this effect. What's more, the Union's proposal is modeled on the definition of "reprisal" contained in Section 2 of the current act. (Exhibit 113)

Thus, in light of the clear demonstrated need, and in light of the fact that the language proposed is modeled on definitions provided under the current legislation, the Union respectfully requests that its proposal concerning whistleblowing be included in the Commission's recommendation.

[125] Question 43. I feel I can initiate a formal recourse process (e.g., grievance, complaint, appeal) without fear of reprisal: https://www.tbs-sct.gc.ca/pses-saff/2019/results-resultats/bq-pq/83/org-eng.aspx

NEW ARTICLE

STUDENT EMPLOYMENT

XX.01 Both the Alliance and the Employer recognize the importance and value in providing students with opportunities to gain work experience and skills through programs provided by the federal government.

XX.02 **"**Students" for the purposes of this Article means students hired under legitimate student programs. Those not hired under legitimate student programs shall be bargaining unit members.

XX. 03 "Legitimate" student programs consists of either the Federal Student Work Experience Program, the Research Affiliate Program or the Post-Secondary Co-operative Education and Internment program.

XX.04 Students shall not be used to either displace bargaining unit employees or to avoid filling bargaining unit positions.

XX.05 Overtime work shall be offered on an equitable basis to employees (bargaining unit members) consistent with Article 28 Overtime. Should no employee accept the offered overtime, the Employer may offer the overtime to students.

XX.06 The Employer shall ensure that students receive adequate training and supervision, and shall ensure that students are not exposed to dangerous or unsafe working conditions and are covered under the Canada Labour Code part II.

XX.07 The parties shall meet within ninety (90) days of ratification to discuss and agree upon the terms and conditions under which those students assigned bargaining unit work might carry out their assigned duties. Such terms and conditions shall include wage rates.

RATIONALE

Student employment has been an on-going source of tension between the parties since the bargaining unit was created in 2007. In negotiations for a first FB collective agreement the Union raised the issue of student employment, with the matter ultimately being resolved when the CBSA committed in writing that it was scaling back student use

and phasing students out at land ports-of-entry. However, students continue to be employed in airport operations, and issues in these workplaces have not gone away.

The Union is not opposed to the employer providing employment opportunities for students. Indeed, many current members of the Union got their start as student workers. The problems lie in the fact that students are used effectively as a cheap labour force rather than the purposes provided for under the FSWEP program. (Exhibit 114)

Students at airports are often required to perform the complete range of job functions assigned to BSO's, this despite the fact that students do not receive anywhere near the training provided to regular BSO's. BSO's as law enforcement professionals receive months of training prior to being assigned to a port, and are required to maintain certain physical standards. None of this is the case with students. The result is not only that students are undermining bargaining unit work, but also putting public safety – and the Union would submit in some cases their own safety – at risk.

Student use has also served to create certain problems in CBSA workplaces in that work and overtime opportunities have been denied Union members and instead assigned to students, leading to grievances in a number of locations (Exhibit 115). What's more, the Union filed two Unfair Labour Practice complaints in the summer of 2020 when CBSA attempted to replace bargaining unit employees with students at the Mississauga and Vancouver postal plants. While the Mississauga matter was ultimately resolved, the Vancouver complaint is slated to go before the Board. (Exhibit 116)

Also, of note is the fact that student employment has risen at CBSA every year since the recent-most collective agreement was negotiated. According a June 2019 report issued by CBSA for fiscal year 2018-2019, the agency in 2018-2019 hired over 1126 students. As of March 2018, there are 8,523 employees in the FB bargaining unit. This means that, based on the agency's numbers, in 2018 there was effectively one student at CBSA for every 7.5 union members. The Union submits that this trend is not only not

in the interest of the Union and its membership, it is not in the interest of the Canadian public.

The CBSA is a law enforcement agency, and a significant majority of the staff represented in the FB bargaining unit are trained law enforcement professionals. To attempt to supplant bargaining unit positions with students is irresponsible.

The Union's proposals concerning student use are designed to address these problems. With respect to xx.01, the Union is reaffirming that it and the employer recognize the importance of and support student programs, in conjunction with the goals set out under the FSWEP program, while xx.02 and xx.03 clearly define 'student' and 'legitimate' student programs.

The Union's proposal for xx.04 again is consistent with the concerns raised by the Union with respect to protecting bargaining unit work and ensuring that positions staffed with fully trained law enforcement professionals are not replaced with student positions.

The proposal for xx.05 is intended to clarify rights already afforded employees under Article 26 Overtime – namely that overtime is to be offered to employees first, before any overtime opportunities are offered to students. The Union's proposal for xx.06 is intended to ensure that students receive adequate training and supervision, and that students are to be subject to protections under the Canada Labour Code.

Lastly, with respect to xx.07, the Union is proposing that the assigning of bargaining unit work to students shall be subject to Union consultation and consent. Given the rapid growth of student use, coupled with grievances filed in a number of locations concerning how students are being used, the Union submits that protections are needed in the collective agreement - for both the employees and for students.

Student employment is growing at CBSA, just as the agency implemented cuts. Grievances have been filed over how students are being employed. Students are

common at CBSA non-land border ports of entry. The Union submits that an issue of this significance should be addressed in the parties' collective agreement. The Union also submits that its proposals are not only in the interests of its members, but also in the interests of students and the Canadian public at large.

In light of these facts, the Union respectfully requests that its proposals concerning students be included in the Commission's recommendation.

DAY IS A DAY

PSAC PROPOSAL

ARTICLE 25
HOURS OF WORK

25.28 Specific Application of this Agreement

For greater certainty, the following provisions of this Agreement shall be administered as provided herein:

(h) **Leave**

~~(i) Earned leave credits or other leave entitlements shall be equal to seven decimal five (7.5) hours per day.~~

(i) When leave is granted, it will be granted on an hourly basis and the number of hours debited for each day of leave shall be equal to the number of hours of work scheduled for the employee for the day in question.

ARTICLE 32
TRAVELLING TIME

32.08 Travel Status Leave

(a) An employee who is required to travel outside his or her headquarters area on government business, as these expressions are defined by the Employer, and is away from his permanent residence for ~~forty (40)~~ **twenty (20)** nights during a fiscal year shall be granted ~~seven decimal five (7.5) hours~~ **one day** off with pay. The employee shall be credited with one additional ~~seven decimal five (7.5) hours of time~~ **day off with pay** for each additional twenty (20) nights that the employee is away from his or her permanent residence to a maximum of ~~eighty (80)~~ **one hundred (100)** additional nights.

(b) The maximum number of days off earned under this clause shall not exceed ~~five (5)~~ **six (6)** days in a fiscal year and shall accumulate as compensatory leave with pay.

(c) This leave with pay is deemed to be compensatory leave and is subject to paragraphs 28.06(c) and (d).

(d) The provisions of this clause do not apply when the employee travels in connection with courses, training sessions, professional conferences and seminars, unless the employee is required to attend by the Employer.

ARTICLE 33

LEAVE – GENERAL

33.01

(a) ~~When an employee becomes subject to this Agreement, his or her earned daily leave credits shall be converted into hours. When an employee ceases to be subject to this Agreement, his or her earned hourly leave credits shall be reconverted into days, with one day being equal to seven decimal five (7.5) hours.~~

~~(b) Earned leave credits or other leave entitlements shall be equal to seven decimal five (7.5) hours per day.~~

(b) When leave is granted, it will be granted on an hourly basis and the number of hours debited for each day of leave shall be equal to the number of hours of work scheduled for the employee for the day in question.

(c) Notwithstanding the above, in Article 46, Bereavement Leave with Pay, a "day" will mean a calendar day.

ARTICLE 43

LEAVE WITH PAY FOR FAMILY-RELATED RESPONSIBILITIES

43.02 The total leave with pay which may be granted under this Article shall not exceed ~~thirty-seven decimal five (37.5) hours~~ **ten (10) days** in a fiscal year.

RATIONALE

The parties' dispute concerning the issue of time granted to an employee for the purposes of paid leave (also known as "day is a day") has been on-going for well over a decade. In 2000 the Employer attempted to implement a system whereby a day of leave counted for 7.5 hours. This implementation was grieved more than once by the Union, and these grievances were upheld by the PSLRB in 2001 (2001 PSSRB 117). In the subsequent 2004 round of negotiations, when employees currently in the FB bargaining unit were in the much larger PA bargaining unit, the Employer was successful in achieving a collective agreement with the Union that removed the word "day" from the parties collective agreement in all areas related to the granting of leave with pay, and instead replacing it with 7.5 hours, which are the hours worked by a regular day worker in the PA (and now the FB) agreement. This modification was accepted and ratified by the PA membership at a time when shift workers represented a small minority within the affected bargaining unit. As has been previously been stated, the opposite is now the case under the FB contract, in that a majority of the employees are shift workers.

The reason that this change represented such a significant concession is that many – a majority – of employees that are now in the FB bargaining unit do not work 7.5-hour shifts. Consequently, when an employee takes a day of leave, the employee does not get the equivalent of a "day's" leave, but rather less than what the employee would have worked that day. The result ends up being that the employee must make up the lost time either with annual leave, compensatory time or via working additional hours to make up the time later in the schedule.

The Union submits that this arrangement is patently unfair. It effectively punishes certain employees for being shift workers. Not only are employees that work shifts required to work irregular hours, but additionally they must either use their annual leave or work more hours later in their schedule if they take a day of leave. Day workers are not subjected to this. The Union submits that shift working employees should not be either.

At the time that the change was made, the Employer argued that the system that was in place prior to the 2004 round was unfair to day workers as it meant that, in over all hours, shift workers ended up being afforded more leave. However, the reason that this is in fact the case is because the Employer's operations are such that 7.5-hour shift are often not feasible. Hence the Employer is taking the position that, even though it is because of the Employer's operations that most employees do not work 7.5 days, the employees must still be forced to make up time later in a schedule, or use their annual leave, in order to ensure that they can be off for a full day of leave. This when, as previously indicated, the adverse effects of shift work on workers is well documented. Again, the Union submits that this is patently unfair, and that this inequity should be rectified.

The position of the Union on this matter is one that has been both upheld and reinforced by the PSLRB. For example, in 1991 the Board in the *Phillips* decision stated that, in response to the position taken by the Employer (which in this round of bargaining reflects what is currently in the parties' Agreement), "…the employer's view would perpetuate unfairness on those employees who work long shifts…" (PSSRB 166-2-20099), and in the *King and Holzer* decision, the Board stated, in the context of Family Related Responsibility Leave, that "the events giving rise to family related leave do not fit within the confines of a 7.5 hour shift". (PSSRB 166-34-30346).

Thus, in light of the reasons provided above, and in light of the jurisprudence on this matter, the Union requests that the Commission include the Union's proposals for Day is a Day in its recommendation.

EMPLOYER PROPOSALS

ARTICLE 10
INFORMATION

EMPLOYER PROPOSAL

Replace current with the following:

ARTICLE 10
INFORMATION

EMPLOYER PROPOSAL

10.02 The Employer agrees to supply each employee with ~~a copy of~~ **access to** this Agreement ~~and will endeavour to do so within one (1) month after receipt from the printer~~. **For the purpose of satisfying the Employer's obligation under this clause, employees may be given electronic access to this Agreement. Where electronic access is unavailable, the employee shall be supplied, upon request, with a printed copy of the Agreement.**

RATIONALE

With respect to the employer's proposal, the PSAC has not agreed to this change for any of its collective agreements in the core public service. This includes the settlements reached over this cycle of bargaining for the PA, SV, TC and EB groups, as well and the settlements with CRA and CFIA. A majority of the workers in the FB bargaining unit spend very little time in front of a computer and therefore the language proposed by the employer effectively amounts to a restriction on access to the parties' agreement, which the Union submits is in neither party's interest. Thus, the Union respectfully requests that the employer's proposal not be included in the Board's recommendation.

EMPLOYER PROPOSAL

Replace current with the following:

ARTICLE 11
CHECK-OFF

~~11.07 The Employer agrees to continue the past practice of making deductions for other purposes on the basis of the production of appropriate documentation.~~

RATIONALE

With respect to the employer's proposal, the PSAC has not agreed to this change for any of its collective agreements in the core public service. This includes the settlements reached over this cycle of bargaining for the PA, SV, TC and EB groups, as well and the settlements with CRA and CFIA. The employer has provided no cogent rationale whatsoever as to why this language to apply to employees in the FB group when the employer has agreed to status quo with all other PSAC-represented groups. In light of this fact the Union respectfully requests that the employer's proposal not be included in the Board's recommendation.

EMPLOYER PROPOSAL

Replace current with the following:

ARTICLE 14

LEAVE WITH OR WITHOUT PAY FOR ALLIANCE BUSINESS

14.14 ~~Effective on the date of signing of the collective agreement,~~ **L**eave granted to an employee under ~~articles~~ **clauses** 14.02, 14.09, 14.10, 14.12 and 14.13 will be with pay **for a total maximum period of 3 months per fiscal year and** the Alliance 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 in Appendix M.

RATIONALE

There have been many issues in the past in getting Union members released for Alliance business. The Union speaks to these issues in its rationale with respect to its own proposals for Article 14. Now the employer is looking for the Union to agree to language that would exacerbate these problems, language that no other PSAC group in the core public administration has agreed to. Given the nature of problems at CBSA concerning this issue, the PSAC has no intention of breaking that trend for the FB group. What's more, the employer provided no cogent rationale on this matter.

Given these facts, the Union therefore respectfully requests that the panel not include the employer's proposals concerning Article 14 in its recommendation.

EMPLOYER PROPOSAL

Replace current with the following:

ARTICLE 17
DISCIPLINE

17.05 Any document or written statement related to disciplinary action which may have been placed on the personnel file of an employee shall be destroyed after two (2) years have elapsed since the disciplinary action was taken, provided that no further disciplinary action has been recorded during this period. **This period will automatically be extended by the length of any period of leave without pay.**

RATIONALE

The language in the parties' current collective agreement is the standard in the core federal public administration, including collective agreements between the PSAC and the Treasury Board. Furthermore, it is language that has been in the parties' collective agreement since the first agreement was negotiated. The employer has provided no demonstrated need as to why the parties' collective agreement should be modified as proposed by the employer.

The Union points out that another federal employer – the House of Commons – has proposed the same language in the past on several occasions, only to have it rejected by the Board each time in interest arbitration. (2018 FPSLREB 21)

Achieving new protections for its members in the context of discipline is a priority for the Union in this round of negotiations. This proposal goes in the opposite detection. The Union has no intention of agreeing to this.

Given these facts, the Union therefore respectfully requests that the panel not include the employer's proposals concerning Article 17 in its recommendation.

EMPLOYER PROPOSAL

Replace current with the following:

ARTICLE 25

HOURS OF WORK

25.12

a. An employee on day work whose hours of work are changed to extend before or beyond the stipulated hours of 7 am and 6 pm as provided in paragraph 25.06(b), and who has not received at least **forty-eight (48) hours'** ~~seven (7) days'~~ notice in advance of the starting time of such change shall be paid for the first (1st) day or shift worked subsequent to such change at the rate of time and one-half (1 1/2) for the first seven decimal five (7.5) hours and double (2) time thereafter. Subsequent days or shifts worked on the revised hours shall be paid for at straight-time rate, subject to Article 28: overtime.

. . .

25.21

a. An employee who is required to change his or her scheduled shift without receiving at least **forty-eight hours'** ~~seven (7) days'~~ notice in advance of the starting time of such change in his or her scheduled shift shall be paid for the first (1st) shift worked on the revised schedule at the rate of time and one-half (1 1/2) for the first (1st) seven decimal five (7.5) hours and double (2) time thereafter. Subsequent shifts worked on the revised schedule shall be paid for at straight-time rate, subject to Article 28: overtime.

. . .

25.23

a. Where shifts other than those provided in clause 25.18 are in existence when this agreement is signed, the Employer~~, on request, will~~ **may** consult with the Alliance on such hours of work and, in such consultation, will establish that such shifts are required to meet the needs of the public and/or the efficient operation of the service.

b. Where shifts are to be changed so that they are different from those specified in clause 25.18, the Employer, except in cases of emergency~~, will~~ **may** consult in advance with the Alliance on such hours of work and, in such consultation, will establish that such hours are required to meet the needs of the public and/or the efficient operation of the service.

c. **Subject to 25.23 (a) or (b~~), W~~w**ithin five (5) days of notification of consultation ~~served by either party,~~ the parties shall notify one another in writing of the representative authorized to act on their behalf for consultation purposes.

Consultation ~~will~~ **may** be held at the local level for fact-finding and implementation purposes.

25.24 Variable shift schedule arrangements

a. Notwithstanding the provisions of clauses 25.06 and 25.13 to 25.23 inclusive, consultation may be held at the local level with a view to establishing shift schedules which may be different from those established in clauses 25.13 and 25.18. Such consultation will include all aspects of arrangements of shift schedules.

b. Once a mutually acceptable agreement is reached at the local level, the proposed variable shift schedule will be submitted at the respective Employer and Alliance headquarters levels before implementation.

c. **Subject to operational requirements as determined by the Employer,** ~~Both~~ **the** parties will endeavour to meet the preferences of the employees in regard to such arrangements.

d. It is understood that the flexible application of such arrangements must not be incompatible with the intent and spirit of provisions otherwise governing such arrangements. Such flexible application of this clause must respect the average hours of work over the duration of the master schedule and must be consistent with operational requirements as determined by the Employer.

e. Employees covered by this clause shall be subject to the provisions respecting variable hours of work established in clauses 25.25 to 25.28 inclusive.

RATIONALE

Scheduling issues have been massively contentious for the FB bargaining unit over the years. As a result, the Union is seeking improvements to Article 25, as articulated earlier in this brief. The employer's proposals for 25.12, 25.21 and 25.23 would effectively undo protections that have been in effect for employees for decades. In the case of 25.23 and 23.24, the employer is effectively proposing to eliminate protections that have been the subject of negotiation over the years and would fundamentally alter scheduling in CBSA workplaces. What's more, the employer has provided no demonstrated need. The Public Interest Commission did not recommend these changes in the previous round of negotiations. The Union has no intention of agreeing to these changes, and indeed the chances of employees voting in favour of an agreement containing these changes are virtually nil.

The Union therefore respectfully requests that the panel not include the employer's proposals concerning Article 25 in its recommendation.

EMPLOYER PROPOSAL

Replace current with the following:

ARTICLE 30
DESIGNATED PAID HOLIDAYS

30.02 For greater certainty, employees who do not work on a Designated Paid Holiday are entitled to seven decimal five (7.5) hours pay at the straight-time rate.

(New clause – Renumber subsequent clauses consequentially)

RATIONALE

The Union has proposals concerning “a day is a day”, as it is a long-standing matter of dispute between the parties. The one section of the collective agreement where a day still represents a day is the clause the employer is looking to change here. The employer has characterized this as a ‘housekeeping’ or ‘clarification’ proposal in the past. It is neither. It represents a serious concession for members of the FB group who work shifts – a majority of the bargaining unit. The employer knows how contention scheduling has been for workers on designated paid holidays in the past. It is for this reason that the parties negotiated new language in the previous round of negotiations to deal with the matter of who works and who doesn’t on holidays. To agree to this proposal would be hugely controversial for the Union.

The employer proposed it in the previous round of negotiations and lived with the status quo. The Union has no intention of agreeing to it. The Union therefore respectfully requests that the panel not include the employer’s proposals concerning Article 30 in its recommendation.

EMPLOYER PROPOSAL

Replace current with the following:

ARTICLE 41

LEAVE WITHOUT PAY FOR CARE OF THE FAMILY

41.02 **Subject to operational requirements as determined by the Employer**, an ~~An~~ employee **may** ~~shall~~ be granted leave without pay for the care of family in accordance with the following conditions:

a. an employee shall notify the Employer in writing as far in advance as possible but not less than four (4) weeks in advance of the commencement date of such leave unless, because of urgent or unforeseeable circumstances, such notice cannot be given;

b. leave granted under this Article shall be for a minimum period of ~~three (3)~~ **twelve (12) weeks**;

c. the total leave granted under this Article shall not exceed five (5) years during an employee's total period of employment in the public service;

d. leave granted for a period of one (1) year or less shall be scheduled in a manner which ensures the **operational requirements** ~~continued service delivery~~ **are maintained in order to meet the needs of the public and/or the efficient operation of the service**.

e. an employee who intends to take leave granted for a period of one (1) year or less during the summer leave period will submit their request on or before April 15, and on or before September 15 for the winter leave period;

RATIONALE

With respect to the employer's proposal, the PSAC has not agreed to this change for any of its collective agreements in the core public service. This includes the settlements reached over this cycle of bargaining for the PA, SV, TC and EB groups, as well and the settlements with CRA and CFIA. The employer has provided no cogent rationale whatsoever as to why this language to apply to employees in the FB group when the employer has agreed to status quo with all other PSAC-represented groups. This is a leave that many members access and the Union has no intention of giving it up. In light

of this fact the Union respectfully requests that the employer's proposal not be included in the Board's recommendation.

EMPLOYER PROPOSAL

Replace current with the following:

ARTICLE 54
STATEMENT OF DUTIES

54.01 Upon written request, an employee shall be provided with a ~~complete and current~~ statement of the duties and responsibilities of his or her position, including the classification level and, where applicable, the point rating allotted by factor to his or her position, and an organization chart depicting the position's place in the organization.

RATIONALE

The language being proposed by the employer for Article 54 frankly is absurd. No rationale has been provided to the Union as to why an employee's statement of duties should not be complete and current. The employer's proposal, the PSAC has not agreed to this change for any of its collective agreements in the core public service. This includes the settlements reached over this cycle of bargaining for the PA, SV, TC and EB groups, as well and the settlements with CRA and CFIA. In light of this fact the Union respectfully requests that the employer's proposal not be included in the Board's recommendation.

EMPLOYER PROPOSAL

Replace current with the following:

APPENDIX B

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE TREASURY BOARD OF CANADA
AND
THE PUBLIC SERVICE ALLIANCE OF CANADA
WITH RESPECT TO THE
VARIABLE SHIFT SCHEDULING ARRANGEMENTS

This memorandum is to give effect to the understanding reached between the Employer and the Public Service Alliance of Canada in respect of employees in the Border Services (FB) bargaining unit.

1. Consultation process

The intent of this Appendix is to provide the parties with a process to facilitate reaching agreement at the local **or National** level **VSSAs**, within prescribed timeframes.

2. VSSA discussions

2.1 Local **or National** consultation pursuant to paragraph 25.24(a) of the agreement will take place within five (5) days of notice served by either party to ~~re~~open ~~an existing~~ **a** variable shift schedule agreement ~~or negotiate~~ **with a view to revising, or creating** a new variable shift schedule arrangement. Prior to this meeting, the Employer will provide to the Union the following information ~~in respect of its operational requirements~~:

1. its **service level requirements**, and
2. the number of scheduled employees required for each hour,**.**

~~and~~

~~3. the rationale for scheduling~~

2.2 The number of employees identified in paragraph 2.1 does not represent the minimum presence required on any shift.

2.3 Discussions at the local **or National** level shall be concluded within five (5) weeks from the time of the first meeting identified in paragraph 2.1 above.

RATIONALE

Appendix B was negotiated and agreed upon for the first time in the 2007 round of negotiations. It stemmed from a recognition on the part of both parties that there was a need for clearer rules in the parties' collective agreement with respect to how negotiations for VSSA's are to be undertaken, and concerning how schedules are populated and vacant hours filled. It was negotiated in the wake of a number of tumultuous rounds of VSSA negotiations in CBSA worksites, Pearson International Airport in particular, where protracted negotiations and the Employer's implementation of particularly harsh hours of work schedules led to bitter and rancorous labour relations between the parties at the local and regional levels.

The employer's proposals for Appendix B represent effectively the undoing of the hard work, negotiation and compromise that the parties engaged in over the past three rounds of bargaining and would negate some of the fundamental principles behind VSSA negotiation and resolution.

First, the parties have understood for over a decade that decision-making with respect to VSSA negotiation can and should rest ultimately with those who must live with the schedule – the employees and management at the local level. Second, the parties have understood that an exchange of relevant information at the outset of VSSA talks is essential for the process to run smoothly and to happen in a timely fashion. Lastly, after much bargaining in the first round of negotiations in 2009, the parties agreed that the Union would hold a vote on a schedule submitted by the employer if no agreement could be reached, as the parties understood that decisions about whether a schedule is acceptable or not was a matter for the Union to decide with its membership. The employer is also looking for the ability to unilaterally terminate a VSSA, yet at the same time is proposing to remove the Union's ability to serve notice to end a VSSA.

In this round of negotiations, the employer is proposing to undo much of this. First, the employer is proposing to create a mechanism where VSSA talks would be taken away from the regional level and instead be done nationally. This is unacceptable to the Union. To provide CBSA national the prerogative to renegotiate – and ultimately force a vote - over 90 VSSA's that have reached at CBSA worksites over the years would be massively disruptive. Second, the employer has proposed to modify the language in the contract so that the employer is no longer obligated to provide information required for VSSA talks – including the rationale behind its scheduling practices. The Union cannot understand how the employer believes the Union can accept a proposal on the part of the employer without the employer needing to provide the necessary rationale.

The Union has no intention of agreeing to these concessions, and were it to do so the odds of such an agreement getting ratified by the membership are virtually zero.

A majority of employees in the FB bargaining unit are covered by VSSA's. There are over 100 VSSA's in effect across Canada. They are very much the norm in CBSA workplaces where employees work shifts. VSSA negotiations are often difficult. The parties recognize this as Appendix B was created in an effort to address this. The Union's proposals for Appendix B would ensure that the parties act in good faith. The employer's proposals are draconian, would undo years of progress in bargaining between the parties and produce a significant power imbalance in favour of the employer. It is for all of these reasons that the Union respectfully requests that its proposals be included in the Commission's recommendation, and that the employer's proposals not be included.

SUMMARY

With very few exceptions, what the Union is seeking in this round of negotiations are changes that have already been agreed to by the federal government for other workers in its employ, or is based on significant precedent established for persons engaged in similar occupations in the broader public sector. An early retirement scheme, a paid meal period, the increased vacation leave quantum, investigatory suspension language – all are modeled on what the Employer has already agreed to, or in the case of the RCMP, implemented on its own as a matter of policy. In the case of telework and leave with income averaging, the Union's proposals reflect principles that have been advocated by the federal government and are enshrined in employer policy.

Again, the Act states that a public interest commission must take into consideration the following when rendering its recommendation for a settlement:

- 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;

- 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;

- 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

Employees in the FB bargaining unit work in law enforcement. In addition to the Canada Border Services Act and the Customs Act, bargaining unit employees enforce over 90 acts, regulations and international agreements on behalf of federal departments, agencies, the provinces and territories[126]. They are responsible for the safety and security of the Canadian public. The Union submits that it would be neither fair nor reasonable for these employees to be denied the same terms and conditions of

employment as employees in similar occupations elsewhere in the federal public service and in the broader Canadian labour market. Employees in the FB bargaining unit lag far behind their fellow Canadian law enforcement workers, and the Union submits that the on-going issues with respect to low employee morale, toxic labour relations and the surfacing of problems witnessed in a number of workplaces across the country will continue until such time as the Employer properly recognizes the work done by employees in the FB bargaining unit and the vital services that they provide the Canadian public.

This round of bargaining represents an opportunity to address these issues and rectify these problems. It is also an opportunity for the parties to put labour relations on a new, more positive trajectory. However for that to occur the Employer will need to finally address the issues raised by the Union and its membership and agree to a collective agreement that provides parity with other enforcement workers both within the federal public service and within the broader Canadian labour market.

For a great many years, the needs and concerns of these employees went unaddressed as they represented a small minority within a much larger bargaining unit. In the last three rounds of bargaining some progress was made. But terms and conditions of employment continue to lag behind. CBSA is a law enforcement agency and its employees are law enforcement personnel. The Union submits that it is time that workers in the FB bargaining unit be treated as such.

In light of these facts, the Union submits that it has fully justified the amendments proposed in the brief, and respectfully requests for their incorporation into the Commission's recommendations.

[126] CBSA Legislation, Regulations and Other Instruments: http://www.cbsa-asfc.gc.ca/agency-agence/legislation-eng.html