
# 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**
**Michael Bendel**

**Representative of the interests of the Employees**
**Joe Herbert**

**Representative of the interests of the Employer**
**Jean-François Munn**

**October/November 2017**

## Appearances

Morgan Gay, Negotiator
David-Alexandre Leblanc, Research Officer

**PSAC Bargaining Team Members:**

Lauren Baert
Joey Dunphy
Brett Evans
Charles Khoury
Diane Lacombe
Brea L Lewis
Richard Sutcliffe
Dave Van Helvert

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# *1. INTRODUCTION*

## The Bargaining Unit

The Border Services (FB) bargaining unit comprises approximately 8,300 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 A)
[2] Criminal Code R.S.C., 1985 c. C-46 s.2. (Exhibit B)
[3] Government Notice (Treasury Board Occupational Group Definition) C. Gaz. 2006. I. 512. (Border Services Group Definition) (Exhibit C)

CBSA is a law enforcement agency, and union members in the FB bargaining unit work in law enforcement. For example, in 2015 alone, workers at CBSA:

- Seized well over 7,000 weapons and firearms
- effected more than 8,000 drug seizures worth over $400 million
- removed 11,000 persons, the priority being on those with criminality
- 43,000 seizures of prohibited animals, food and plants
- Collected $29 billion in taxes and duties, 10% of all government revenue

The CBSA seizes on average 450 stolen cars per year, and on an annual basis recovers missing children and regularly effects seizures of child pornography.

The CBSA is the second largest armed law enforcement organization in Canada - only the RCMP is larger. (Exhibit 1) 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 2)

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 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[4].

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. As was stated recently by then Public Safety Minister Vic Toews in the wake of a shooting incident that took place at a land border crossing in October of 2012:

> *This event is a sobering reminder of the dangerous conditions faced daily by the men and women of our law enforcement agencies as they work to protect the safety and security of Canadians. (Exhibit 3)*

This sentiment was echoed by then CBSA President Luc Portelance shortly thereafter:

> *This (incident) is a profound reminder of the risks that border services officers assume every day. I know that the courage and dedication of our officers are second to none. (Exhibit 4)*

In his testimony before the Standing Senate Committee on National Security and Defence in 2016, CBSA Vice-President Martin Bolduc 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".(Exhibit 5)

[4] Northgate Group Corp, *A View From the Frontlines Officer Safety and The Necessity of Sidearms*, January 2006. Available online: http://www.ciu-sdi.ca/wp-content/uploads/documents/Northgate.pdf (Executive summary of the report can be found in Exhibit F)

Yet despite the vital role played by FB bargaining unit employees in ensuring that Canada's laws are observed and its borders secure, 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 10 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 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 earlier this year.

**Negotiations History**

Notice to Bargain was served under section 105 of the Public Service *Staff Relations Act* "*PSLRA*") on April 16, 2014. The parties met in eighteen sessions for a total of 48 days of negotiations meetings and 5 days of mediation spanning from July 8th, 2014 to February 3, 2017.

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 3rd 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.

With respect to labour relations between the parties, they are perhaps the worst that they have ever been in the 45-plus years that border services personnel have been unionized.

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.

As of September 11th, 2017, there are over 7,000 grievances filed against the Employer by employees or their Union, with 4393 at the fourth level.

The last comprehensive Public Service Employee Survey conducted in 2014 by Treasury Board paints a bleak picture indeed for the FB group. A majority of respondents in front-line positions who participated in the survey indicated that

- they do not have confidence in CBSA senior management
- CBSA senior management will not try to resolve concerns raised in the survey
- employees do not receive meaningful recognition for work well done
- there are no opportunities to provide input into decisions that affect their work
- they do not feel they get training needed to do their jobs
- that processes for selecting individuals for the filing of jobs are not done fairly
- that CBSA does not do a good job of supporting career development
- employees cannot raise concerns without fear of reprisal
- that there no opportunities for promotion within the agency
- are unsatisfied with the agency. (Exhibit 6)

An additional survey was conducted this year. Though there were far fewer questions asked, the survey found that a majority of front-line respondents

- feel that the CBSA does not treat them with respect

- believe CBSA does not encourage employees to take initiative
- employees with new ideas would not be supported by CBSA
- are unsatisfied with the CBSA
- that their workplace is not psychologically healthy
- of those who experienced harassment, 70% said it came from someone in a position of authority. (Exhibit 7)

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.

There are also clearly recruitment and retention problems at CBSA, as over the course of the past 3 years the CBSA has gone to great lengths to advertise employment with the agency, from youtube videos to requiring some officers at certain ports of entry to hand out brochures to the public encouraging individuals to apply for a job as a Border Services Officer.

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.

## Legislative Framework

As per the agreement reached between the PSAC and the Attorney General of Canada in June of 2016, the PSLRA as constituted prior to the changes made in 2013 outlines the factors to be taken into account by the Public Interest Commission (PIC) in rendering its recommendation.

> ***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.

(Exhibit 8)

Consistent with the above, the Union will present arguments in this submission to support its request for reasonable improvements to working conditions for workers in the FB bargaining unit, improvements that respect the mandate of the PIC. These include measures that would ensure that compensation and other terms and conditions of employment are comparable to those of employees in similar occupations elsewhere in the public sector, and that recognize the necessity of attracting competent persons to, and retaining them in, the public service in order to meet the needs of Canadians.

## *2. OUTSTANDING ISSUES*

***ARTICLE 2***
***INTERPRETATION AND DEFINITIONS***

**PSAC PROPOSAL:**

**Amend to read:**

**ARTICLE 2**
**INTERPRETATION AND DEFINITIONS**

**"Service"** *(service)* means:

(a) All service within the public service, whether continuous or discontinuous, except where a person who, on leaving the public service, takes or has taken severance pay. However, the above exception shall not apply to an employee who receives severance pay on lay-off and is reappointed to the public service within one year following the date of lay-off.

(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 |

**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 9)

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 10***
***INFORMATION***

**PSAC PROPOSAL:**

**Replace current with the following:**

**ARTICLE 10**
**INFORMATION**

**10.01** The Employer agrees to supply the Alliance each quarter **with a list of all employees in the bargaining unit. The list shall include the** name, geographic location and classification **of the employee**s **and the date of appointment for** each new employee.

**EMPLOYER PROPOSAL:**

**10.02** The Employer agrees to supply each employee with a copy of 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:**

The Union is proposing modifications to the current Article 10.01 in order to ensure that the Union has up to date information with respect to its membership. There is considerable turnover in the FB bargaining unit, and as a result it is difficult for the Union to track who is still a member and who has left. Furthermore, there is considerable mobility within the bargaining unit as employees are often deployed to a port upon completing training at Rigaud and then see to relocation once working at their initial posting.

The information is also important for the Union to have as, unlike other bargaining units within the core public service, VSSA negotiations are common for this bargaining unit. VSSA talks can be far more productive when Branch Presidents and local Union representatives have access to up to date membership lists. VSSA talks are generally-

speaking often contentious to begin with. Providing the Union with up-to-date lists would help to eliminate an unnecessary irritant.

The CBSA has up to date employee lists, by worksite. The Union submits that there is no cogent reason whatsoever as to why the Agency cannot provide updated lists on a quarterly basis.

What's more there are a number of precedents for this in the federal public service as the Treasury Board has agreed to provide updated and complete bargaining unit lists in its collective agreements for the UT, EC, FI and PIPSC. (Exhibit 10) There is no reason why it cannot do the same for this group.

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 2016 settlement with CRA. 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.

## *ARTICLE 12*
## *USE OF EMPLOYER FACILITIES*

**PSAC PROPOSAL:**

### ARTICLE 12
### USE OF EMPLOYER FACILITIES

**Replace the current 12.03 with the following and re-number article accordingly:**

**12.03 The Employer shall not interfere with an employee's right to read, discuss and distribute Alliance information on non-work time in the workplace.**

**12.04 Any duly accredited representative of the Alliance shall have access to the Employer's premises for the purpose of resolving a complaint or a grievance, attending a meeting with management, and/or meetings with Alliance-represented employees.**

**RATIONALE:**

The Union is proposing to replace the current 12.03 for two inter-related reasons. First, the language contained in the current collective agreement has in the past been interpreted and used by the Employer to infringe upon the Union's rights under the PSLRA, namely via denying Union representatives access to CBSA worksites to speak with members of the Union. The Union responded to two specific incidents where access was denied – once in Windsor, Ontario and another in Saskatoon, Saskatchewan – by filing a complaint with the PSLRB. In its defence, the Employer citied the criteria contained in 12.03 of the Agreement as representing the rules under which a Union representative may enter the workplace, and that:

> *(…) any other type of access not specifically mentioned in the collective agreement is subject to the discretion of the Employer, which is free to administer its facilities as it sees fit.*

Furthermore, the Employer stated that:

> *The fact that the bargaining agent tabled an amendment which attempted to expand on the wording of clause 12.03 of the collective agreement (Exhibit 6) is, according to the Employer, recognition by the bargaining agent that the use of the Employer's premises is an issue that must be negotiated and acquired through bargaining." (PSLRB 561-02-498, Exhibit 11)*

In negotiations the Employer has rejected the Union's proposal with respect to Article 12.03. Hence the Employer's position before the Board was that a Union representative's access to the workplace was a matter to be negotiated in collective bargaining and was not subject to the Act, and in bargaining the Employer has refused to agree to language that would ensure that Union representatives would have access, and this despite the fact that the Union has tabled language that would require considerable notification in advance.

The Board's decision in this case, issued in May of this 2013, stated that the Employer had violated the Act in denying the Union access to its members in CBSA workplaces.

> *Denying (Union representative) Mr. Gay access to CBSA premises on October 13 and 29, 2009 for the purpose of meeting with employees in the bargaining unit during non-working periods to discuss collective bargaining issues, violated paragraph 186(1) (a) of the Act and were taken without due regard to section 5 and to the purposes of the Act that are expressly stated in its preamble. (PSLRB 561-02-498, Exhibit 12)*

The Board also ordered Treasury Board and the CBSA in that same decision to: "…cease denying such access in the absence of compelling and justifiable business reasons that such access might undermine their legitimate workplace interests." (PSLRB 561-02-498)

The Board issued a subsequent decision in 2016 concerning the exact same issue where a PSAC representative was denied access to Veterans Affairs and Health Canada workplaces.

> *I declare that the refusal to allow a complainant representative to conduct a walkthrough of the Veterans Affairs Billings Bridge facility on November 5, 2014, to conduct a walkthrough and an on-site meeting during off-duty hours at Health Canada's Guy Favreau Complex on November 25, 2014, and to conduct a walkthrough and an on-site meeting during off-duty hours at DND facilities on December 11, 2014, and January 6, 2015, all constituted violations of s. 186(1)(a) of the Act by the respondent and by the departments involved. (PSLREB 561-02-739)*

In light of the language contained in 12.03 of the parties' Agreement, in light of the arguments raised by the Employer in Board proceedings in 2013 and in light of the decisions rendered by the Board on this matter, the Union submits that the current language is inconsistent with the rights afforded Union representatives under the PSLRA. It places restrictions on the Union that the Board has found to be incompatible with the Act; hence the Union's proposal to amend the language to ensure that the Union's rights are upheld.

The second reason as to why the Union has proposed to modify 12.03 is to achieve parity with what Treasury Board has already agreed to for its employees in the CX bargaining unit. The CX collective agreement, which covers workers that work in federal prisons and other penal institutions, makes no reference to the need for Union representatives requiring permission from the Employer to enter the worksite. The CX language also provides Union representatives access to the workplace for meetings with union membership, consistent with what the Union has proposed for the FB bargaining unit (Exhibit 14).

Workers in the CX bargaining unit work in contained environments where danger is present, and yet the Employer has agreed to language that ensures Union representatives access to the workplace for the purposes of meeting with members.

Workers in the CX bargaining unit are enforcement workers that work for the same Employer and under the same Ministry. The Union submits that there is no reason why employees in the FB group should be denied rights that have been agreed to by the same Employer for other enforcement workers.

The Union is also looking for language that would ensure that the employer cannot interfere with the Union's right to communicate with its membership on non-work time. There have been instances in the past when this problem has arisen. Including this language in the collective agreement would ensure that the Union's statutory rights in the workplace would not be interfered with.

Given that the Board has clearly indicated that the law provides Union representatives with rights that extend beyond what is contained in the current 12.03, and given that what the Union is proposing is virtually identical to what the Treasury Board has agreed to for other enforcement workers in its employ in the case of 12.04, and given the Union's statutory right to communicate with its membership, the Union therefore respectfully requests that its proposals be incorporated into the Commission's recommendation.

## *ARTICLE 13*
## *EMPLOYEE REPRESENTATIVES*

**PSAC PROPOSAL:**

## ARTICLE 13
## EMPLOYEE REPRESENTATIVES

**13.01** The Employer acknowledges the right of the Alliance to appoint or otherwise select employees as representatives.

**13.02** ~~The Alliance and the Employer shall endeavour in consultation to determine the jurisdiction of each representative, having regard to the plan of organization, the number and distribution of employees at the workplace and the administrative structure implied by the grievance procedure. Where the parties are unable to agree in consultation, any dispute shall be resolved by the grievance/adjudication procedure.~~

**13.03**~~2~~ The Alliance shall notify the Employer in writing of the names and jurisdictions of its representatives ~~identified pursuant to clause 13.02.~~

**13.04**~~3~~

(a) A representative shall ~~obtain the~~ **be granted** permission of his or her immediate supervisor before leaving his or her work to investigate employee complaints ~~of an urgent nature~~, to meet with local management for the purpose of dealing with grievances and to attend meetings called by management. ~~Such permission shall not be unreasonably withheld~~. Where practicable, the representative shall report back to his or her supervisor before resuming his or her normal duties.

(b) Where practicable, when management requests the presence of an Alliance representative at a meeting, such request will be communicated to the employee's supervisor.

(c) An employee shall not suffer any loss of pay when permitted to leave his or her work under paragraph (a).

**13.05**~~4~~ The Alliance shall have the opportunity to have an employee representative introduced to new employees as part of the Employer's formal orientation programs, ~~where they exist~~.

**13.xx The Employer shall grant leave with pay to an employee acting on behalf of the Alliance for the purposes of grievance preparation, and for the purposes of discussion consistent with Article 18.07.**

**RATIONALE:**

The Union's proposals for Article 13 are designed to address problems in a number of areas: employer interference in terms of determining the jurisdiction of union representatives, stewards being provided time to investigate complaints and to resolve problems in the workplace, and ensuring consistency in terms of new employee orientation.

The Union's proposal concerning steward jurisdiction is designed to ensure that the current language in Article 13 cannot be interpreted by CBSA management as providing the employer the prerogative to contravene the statutory rights of employees or the bargaining agent under the *Act*. Subsection 5 of the *Act* clearly sets out an employee's rights with respect to Union activities:

> *5 Every employee is free to join the employee organization of his or her choice and to participate in its lawful activities.*

The prohibitions on management in this regard are clear under subsection 186(1) of the *Act* and reflect the right of a bargaining agent to administer the Union and to fully represent employees without interference from management:

***186.*** *(1) No employer, and, whether or not they are acting on the employer's behalf, no person who occupies a managerial or confidential position and no person who is an* officer *as defined in subsection 2(1) of the Royal Canadian Mounted Police Act or who occupies a position held by such an officer, shall*

- **(a)** participate in or interfere with the formation or administration of an employee organization or the representation of employees by an employee organization; or
- **(b)** discriminate against an employee organization.

.

The Union maintains that, to the extent that there exist practices within the CBSA that purport to limit that right of representation, or the participation of employees in the Union's lawful activities, the Union is compelled to seek declaratory contract language. The Union's proposal not only re-affirms the important principle of participation in the lawful activities of their union, it signals to all employees in the bargaining unit - in a meaningful and concrete way - that the Employer will respect that participation.

Accordingly, the Union is proposing that this language be inserted into the collective agreement to ensure that all parties to it have a clear understanding as to legal protections afforded the Union with respect to communication with its membership.

The law is clear that the employer does not have the prerogative or the right to "interfere administration of an employee organization or the representation of employees by such an organization." Decisions related to the jurisdiction of shop stewards and other Union representatives are decisions that are directly related to the administration of the Union in the workplace. Thus the language currently found in the parties' collective agreement is inconsistent with protections afforded the Union under the law, and consequently the Union asks that it be removed.

With respect to the modifications being proposed for the current 13.03, there have been issues with respect to Union representatives in the workplace being released from their duties to address issues. Again, the Union is proposing contract language that would ensure that the employer not be in a position to interfere with a Union representative's ability to carry out his or her duties in the workplace.

The new clause being proposed is intended to address a loophole in the collective agreement. Article 14 of the parties' collective agreement provides for employees to be granted leave with pay for the purposes of a grievance meeting with the employer. Article 18.07 of the parties' agreement recognizes that informal discussion geared towards the resolving of issues - without resorting to the formal grievance procedure – is both valuable and encouraged. It is commonly recognized that the purpose of any

grievance procedure is to not only provide recourse for employees, but also to provide a mechanism within which problems might be resolved via dialogue. Article 1.02 speaks to a commitment on the part of both parties to establish an effective working relationship.

For Union representatives in the workplace to properly work towards successful resolution of problems either via informal discussion or via formal grievance procedure, time is required to meet with affected employees and managers. There have been occasions where employees in the bargaining unit have been forced to take other paid leave, or leave without pay, to undertake activities associated with 18.07 and preparation for grievance meetings. The Union submits that this is inconsistent with the commitments made by the parties in both Article 1.02 and 18.07. What the Union is proposing is that employees acting as Alliance representatives not suffer a loss in pay for engaging in activities that are sanctioned, if not promoted, by the parties' collective agreement.

The Union submits that it is in the interests of both parties for employees acting as Alliance representatives to be afforded leave with pay when such employees are working to resolve problems in the workplace. What's more, the Board has in at least two interest arbitration decisions awarded what the Union is seeking with respect to paid time for matters covered by 18.07. (Exhibit 15) Thus the Union respectfully requests that its proposal be included in the Board's award.

***ARTICLE 14***
***LEAVE WITH OR WITHOUT PAY FOR ALLIANCE BUSINESS***

**PSAC PROPOSAL:**

**ARTICLE 14**
**LEAVE WITH OR WITHOUT PAY FOR ALLIANCE BUSINESS**

**Meetings During the Grievance Process**

**14.07** Where an employee representative wishes to discuss a grievance with an employee who has asked or is obliged to be represented by the Alliance in relation to the presentation of his or her grievance, the Employer will, where operational requirements permit, give them reasonable leave with pay for this purpose ~~when the discussion takes place in their headquarters area and reasonable leave without pay when it takes place outside their headquarters area.~~

**14.08** Subject to operational requirements,

(a) when the Employer originates a meeting with a grievor ~~in his headquarters area~~, he or she will be granted leave with pay and "on duty" status ~~when the meeting is held outside the grievor's headquarters area~~;

(b) when a grievor seeks to meet with the Employer, he or she will be granted leave with pay ~~when the meeting is held in his or her headquarters area and leave without pay when the meeting is held outside his or her headquarters area~~;

(c) when an employee representative attends a meeting referred to in this clause, he or she will be granted leave with pay ~~when the meeting is held in his or her headquarters area and leave without pay when the meeting is held outside his or her headquarters area~~.

**14.xx Branch Presidents**

**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.**

**RATIONALE:**

The Union's proposals for Article 14 are geared towards fixing problems in the workplace and ensuring that employees acting as PSAC representatives have the time that they need to carry out their responsibilities.

For both 14.07 and 14.08, the Union is proposing to remove the qualifier of "within their headquarters area" with respect to union representatives accessing leave with pay for grievance-related matters. Often employees work within certain regions, which do not correspond with a headquarters area – indeed, to the best of the Union's knowledge, 'headquarters area' has never been defined. Thus the current language provides the employer the prerogative to deny employees and union representatives leave with pay for matters covered under Article 14 based on subjective and ill-defined factors.

Furthermore, it is common for discussion related to grievances and complaints to be discussed via telephone, as both the CBSA and PSAC/CIU have representatives at the regional level, and given the nature of CBSA operations and the number of ports of entry across Canada, there are a great many instances where face to face meetings are impossible. As a result, the current language effectively discriminates against those PSAC representatives responsible for large geographic regions versus those working in areas where union membership is densely populated. Indeed, a grievance was filed over this very issue this fall. (Exhibit 16)

The language in the current agreement on this issue is a hold-over from when employees in the FB group were covered by the PA group and does not reflect the realities of CBSA's operations. The Union is therefore proposing to change it so that rights for Union representatives working to resolve grievances be consistently applied across Canada. It is in the interests of both parties for employees acting as Alliance representatives to be afforded leave with pay when such employees are working to resolve problems.

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 the 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 17)

Because the change had taken place in mid-negotiations during the previous round, this round represents the first opportunity the Union has had to properly rectify the elimination of union leave for Branch Presidents. 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 last round of negotiations. 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:**

**ARTICLE 17**
**DISCIPLINE**

**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 just, reasonable and sufficient cause and without his/her receiving beforehand or at the same time a written notice showing the grounds on which a disciplinary measure is imposed.**

**17.0~~1~~ 2**

a) When an employee is suspended from duty or terminated in accordance with paragraph 12(1)(c) of the *Financial Administration Act*, the Employer ~~undertakes to~~ **shall** notify the employee in writing of the reason for such suspension or termination. The Employer shall ~~endeavour to~~ give such notification **beforehand or** at the time of suspension or termination.

b) **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.**

**17.0~~2~~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. **The supervisor must remind the employee of her right to have a representative of the Alliance accompany him or her.** ~~Where practicable,~~ **T**he employee **and his/her Alliance representative** shall receive a minimum of ~~one (1)~~ **two (2)** day's notice of such a meeting.

**17.0~~3~~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.

**17.0~~4~~5** 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.**

**NEW**

**17.08 No employee shall suffer any loss in wages or benefits afforded under this Agreement while on investigatory or administrative suspension.**

**NEW**

**17.09 There shall be no discipline or threat of discipline for exercising, in good faith, any rights under part 2 of the Canada Labour Code. For the purposes of this article, a ministerial declaration alone does not constitute proof of bad faith.**

**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.**

**RATIONALE:**

It would be difficult to overstate the importance of the proposals made for Article 17 to the Union's membership. Ensuring that PSAC members are afforded enhanced protections in the context of discipline is a critical priority for the Union in this round of negotiations.

Since the last round of negotiations concluded management at CBSA is increasingly perceived by PSAC membership as heavy-handed and authoritarian, with employees often being threatened with investigation for frivolous and/or vexatious reasons. Indeed, since the current agreement was signed in 2013, the Union has filed well over two-hundred and fifty 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.

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 (Exhibit 18) 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*
>
> .

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: "(a) respondent found to have committed misconduct will be subject to disciplinary measures…".(Exhibit 19) 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 has taken the clear 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. What's more, the policy states that "(t)he decision to permit a specific observer during an investigation remains at the sole discretion of the Investigator", and that any 'observer' must sign a non-disclosure agreement.

The fact that the employer has taken this position has been challenged by the Union – repeatedly – at the local, regional and national levels, from grievances to labour.management committee meetings to correspondence between the National President of CIU with CBSA leadership.(Exhibit 20) In 2016 a grievance was heard by Adjudicator Marie-Claire Perrault with respect to the termination of PSAC member Karen Grant. In the decision rendered concerning Grant's termination (stemming from a PSI), Adjudicator Perrault found that the PSI process in this case – and the outcome of the process in particular – to be a "sham" and that actions taken by the CBSA that were purported by the employer to be administrative in nature were in fact "disguised disciplinary measures". The employee was subsequently re-instated, and the decision stood despite an application for judicial review by the employer. What's important to note is that the employer challenged the decision primarily on jurisdictional grounds, saying that the PSLREB did not have jurisdiction to render a decision on the matter because of its 'administrative' nature. The Board and the court clearly did not agree.

Despite the precedent set by the Perrault decision in 2016, the employer has not changed its practice concerning the application of Professional Standards Investigations in CBSA workplaces, as the employer continues to deny Union representation in PSI's, as per the CBSA's policy.

The second reason PSIs have been controversial is because they are perceived as a tool to engage in intimidation tactics on the part of CBSA management, in that PSIs are undertaken at times for the most frivolous of matters.

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

Under the current language an employee may be placed 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 employer may impose 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 submits that this is patently unfair and is inconsistent with fundamental principles of progressive discipline. What's more, there have been instances where employees have 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 is 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 filed grievances over the financial hardship caused by the employer's placing them on investigatory suspension without pay for lengthy periods of time (Exhibit 13). To employ a term used by Adjudicator Perrault in the Grant decision, such investigatory suspensions amount to a "punitive" measure.(Exhibit 21)

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

For example, 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 22)*

With respect to the RCMP, its Discipline Policy states that, in the context of disciplinary suspension "stoppage of pay and allowances will only be invoked extreme circumstances". The Policy then states that:

> *Each case of Suspension Without Pay and Allowances is dealt with on its own merits and is considered when the member:*
>
> - *is in jail awaiting trial;*
> - *is clearly involved in the commission of an offence that contravenes a federal or provincial law or the Code of Conduct, and significantly affects the proper performance of his/her duties under the RCMP Act. If the member'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;*
> - *has been absent without authority from his/her post for seven entire days or more in contravention of the Code of Conduct; or*
> - *has failed to report for duty on a specified date to a post to which he/she has been transferred by order, in contravention of Section 40 of the Code of Conduct. (Exhibit L)*

Furthermore, in addition to law enforcement agencies within the federal public service, 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 22)*

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 23) 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 24)

The modifying of the parties' collective agreement as per the Union's proposal for Article 17 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 such a change would also introduce an element of fairness that is currently absent.

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 representatives on hand for meeting with management such as PSI undertakings.

With respect to Union representation, it is standard in the unionized world for employees facing potential discipline to have access to a union representative in meetings with management. And indeed the current collective agreement states that employees have the right to Union representation in "disciplinary hearings". However, in light of the grievances, the jurisprudence, the employer's policy concerning PSIs and the on-going problems in the workplace, the Union's position is that union representation is necessary in 'administrative' meetings at CBSA as the employer continues to treat quasi-disciplinary meetings as 'administrative'.

The Union submits that it is absurd in a unionized environment for an employee to be subject to questioning by management that could lead to discipline and not have access to a Union representative. The CBSA's policy on this matter – namely that an employee in such situations may only have an 'observer' on-hand, that the presence of the observer is at management's discretion and that any notes taken by the 'observer'

cannot be used after the meeting for employee representation matters - runs contrary to jurisprudence and all labour-relations norms. In order to address this, the contract should be modified in order to ensure that basic fundamental rights afforded workers in union shops across Canada be afforded to employees in the FB bargaining unit.

There is a well-established precedent for what the Union is proposing here. For example, in its collective agreement with the CX group, the Treasury Board has agreed to the following:

> ***17.03*** *At any administrative inquiry, hearing or investigation conducted by the Employer, where the actions of an employee may have had a bearing on the events or circumstances leading thereto, and the employee is required to appear at the administrative enquiry, hearing or investigation being conducted, he or she may be accompanied by an employee representative. The unavailability of the representative will not delay the inquiry, hearing or investigation more than forty-eight (48) hours from the time of notification to the employee.*

The Ontario Provincial Police Association collective agreement states that:

> ***Article 31 Informal Disciplinary Procedure*** *A Member shall have the option of being accompanied by and Association representative if the member so requests.*

The Toronto Police Association collective agreement states that:

> ***Article 15***
> *g) Officers against whom complaints have been made have a right to an Association representative being present during any investigation of these Officers.*
>
> *(h) Officers against whom complaints have been made have a right to counsel, Association representation or other agent during any hearing that results from that investigation.*

The Fraternité des policiers et policières de Montréal collective agreement:

> *27.07 a) Lors de toute entrevue à caractère disciplinaire, le policier peut se faire accompagner d'un délégué syndical, ou d'un représentant de la Fraternité.*

Thus clearly what the Union is proposing is not only industry norm, but is has in fact already agreed to by Treasury Board for another group. The same is true with respect to the two-day notice period being proposed.

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 probablilities", 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 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.

The Union's proposal for 17.09 is intended to ensure that rights afforded workers prior to changes made to the health and safety provisions of the Canada Labour Code be re-introduced at CBSA. In 2013 the Code was modified by the government of the day to provide for an employee to be potentially disciplined for exercising rights under the Code without a full and impartial investigation being conducted first. Again, such protections are standard under provincial statutes, and given the work these employees do, the union submits that it is critical that they be afforded the health and safety rights that were in effect for decades prior to the changes made in 2013.(Exhibit 25)

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 the language contained in the Canada Post collective agreement covering workers in Canada Post postal plants be included in the parties collective agreement for the FB group.(Exhibit 26)

**Summary**

The problems associated with discipline at CBSA are well documented. The Public Service Employee Survey conducted in 2014 clearly demonstrates that there are employee concerns with management's heavy-handedness. 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 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. Union representation in meetings with management. Paid investigatory suspension. Discipline only for just cause. Not only are these commonplace, 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**

**NEW 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 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***

**PSAC PROPOSAL:**

**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.

**NEW**
**20.02 Definitions:**

**a) Harassment and bullying is defined as: any vexatious behaviour in the form of repeated and hostile or unwanted conduct, verbal comments, actions or gestures, that affect an employee's dignity or psychological or physical integrity, and that results in a harmful work environment for the employee. A single serious incident of such behaviour that has a lasting harmful effect on an employee may also constitute harassment.**

**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 influence 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.

**~~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*.

**RATIONALE:**

Since the current language in Article 20 was negotiated in 1986 (except 20.04, which was negotiated in the collective agreement expired June 21, 2007), legislation in a number of jurisdictions, other collective agreements, employer policies, and societal norms have all evolved to recognize that harassment can take many forms. Harassment is a serious issue that can have devastating consequences to the person who is subject to it. It is not limited to being sexual in nature. It is important that the language in the collective agreement clearly states that no harassment of any kind will be tolerated in the workplace.

As previously stated in the context of the Union's proposal for Article 17, issues related to managerial heavy-handedness at CBSA is well documented. A critical objective of the PSAC in this round of negotiations is the achieving of enhanced protections for union members at CBSA in the context of discipline and abuse of authority.

The Union proposes to amend this Article to bring it up to date and to ensure that it is consistent with Treasury Board's own "*Policy on the Prevention and Resolution of Harassment in the Workplace*" and to strike the word "sexual", where it appears in the Article. This is also true with respect to abuse of authority, in that the Union is proposing to insert the definition of Abuse of Authority as defined by Treasury Board policy into the parties' collective agreement.(Exhibit 27)

The preamble to the employer's own policy speaks to the commitment of Treasury Board to provide a workplace where employees are treated with respect and dignity. This policy aims to prevent harassment by promoting increased awareness, early problem resolution and the use of mediation.

The policy goes beyond the requirements under *the Canadian Human Rights Act* by addressing other types of workplace harassment, such as harassment of a general nature not related to the prohibited grounds of discrimination, including rude, degrading or offensive remarks or e-mails, threats or intimidation.

In the policy, harassment is defined as "any improper conduct by an individual, that is directed at and offensive to another person or persons in the workplace, and that the individual knew or ought reasonably to have known would cause offence or harm. It comprises any objectionable act, comment or display that demeans, belittles, or causes personal humiliation or embarrassment, and any act of intimidation or threat. It includes harassment within the meaning of the Canadian Human Rights Act." (Exhibit 28)

The Union's proposal mirrors the Treasury Board's anti-harassment policy. The Union wishes to amend the collective agreement because it is the collective agreement that employees and managers often turn to first to in order to understand their respective rights and responsibilities. Something similar to what the Union is proposing here has been negotiated by the Treasury Board for the UT group. (Exhibit 29).

PSAC has negotiated similar language in collective agreements with the governments of both Nunavut and Yukon, (Appendix A) The governments of Ontario (Occupational Health and Safety Act), Manitoba (Workplace Safety and Health Act, 2010); and Saskatchewan (Occupational Health and Safety Act, 2007) have all enacted legislation that defines harassment beyond the bounds of sexual harassment.

In light of these facts, the Union respectfully requests that its proposal for Article 20 be included in the Commission's recommendation.

***ARTICLE 24***
***TECHNOLOGICAL CHANGE***

**PSAC PROPOSAL:**

**ARTICLE 24**
**TECHNOLOGICAL CHANGE**

**Union Proposal – 02/03/16**

**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.~~

**24.02** In this Article, "technological change" means:

(a) the introduction by the Employer of equipment or material 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.

**24.03** ~~Both parties recognize the overall advantages of technological change and will, therefore, encourage and promote technological change in the Employer's operations.~~ 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. **Technological change shall not result in the elimination of bargaining unit positions or the termination of an employee's employment or status.**

**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) 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.

**24.06** As soon as reasonably practicable after notice is given under clause 24.04, the Employer shall consult meaningfully with the Alliance 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 over the life of the current agreement, 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." (Ex. 30) 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 30 )*

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".(JP letter) 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 31)*

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 language as currently constituted in 24.03 is problematic in that it states that the Union must "encourage and promote technological change in the Employer's operations". The Union understands that the employer has the prerogative to make technological changes. However the Union does not see why it should somehow be obligated to "encourage and promote" such change, even when it could be potentially harmful to the Union and its membership. Whether or not to promote and encourage technological change in the workplace should be up the Union based on what form such change takes. It should not be obligatory. The Union has an obligation to represent its membership and their interests. This language could potentially interfere with this legal obligation. This proposal is consistent with what was recently awarded by the PSLRB in interest arbitration for PSAC members working at the House of Commons.(Exhibit 32)

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. To date CBSA has refused this proposal from the Union.

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 33)

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.

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.

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***

**PSAC PROPOSAL:**

Note: In addition to the modifications contained below, the Union is proposing that the collective agreement be modified in such a way as to introduce a forty (40) hour work week with a thirty (30) minute paid meal break for every eight (8) hours.

**ARTICLES 25**
**HOURS OF WORK**

**Day Work**

**25.06** Except as provided for in clauses 25.09, 25.10 and 25.11:

(a) the normal workweek shall be thirty-seven decimal five (37.5) hours from Monday to Friday inclusive;

and

(b) the normal workday shall be seven decimal five (7.5) consecutive hours, exclusive of a lunch period, between the hours of 7 a.m. and 6 p.m.

**(c) notwithstanding (b) above, the Employer shall not unreasonably deny employee requests to start their workday before 7 a.m. Employees who voluntarily choose to start their work day before 7 a.m. shall not be subject to receive late hour premium provided under 25.12 b) for such hours.**

**25.09 Variable Hours**

(a) Notwithstanding the provisions of clause 25.06, upon request of an employee and with the concurrence of the Employer, an employee may complete the weekly hours of employment in a period of other than five (5) full days, provided that, over a period of fourteen (14), twenty-one (21) or twenty-eight (28) calendar days, the employee works an average of thirty-seven decimal five (37.5) hours per week. **The Employer shall make every reasonable effort to grant such requests.**

(b) In every fourteen (14), twenty-one (21) or twenty-eight (28) day period, the employee shall be granted days of rest on such days as are not scheduled as a normal workday for the employee.

(c) Employees covered by this clause shall be subject to the variable hours of work provisions established in clauses 25.24 to 25.27.

**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) and (b) 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), (b) and (c) 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.**

**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 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.

**25.27 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.

**25.29 The following shall apply to all shift-working employees:**

**An employee required by the Employer to work overtime receive a minimum of eight (8) hours rest prior to returning to duty. Employees shall suffer no loss in compensation for being afforded said minimum eight (8) hours of rest.**

**EMPLOYER PROPOSALS**:

**25.05 Workplace Change**

**When an employee is assigned from a permanent workplace to a temporary workplace for a period of 14 consecutive calendar days or more, the provisions of the National Joint Council travel directive shall apply unless the employee is notified, in writing, seven calendar days in advance of the change in workplace.**

**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'~~ **forty-eight (48) hours'** 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.

**25.22**

(a) An employee who is required to change his or her scheduled shift without receiving at least ~~seven (7) days'~~ **forty-eight (48) hours'** 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 **inform** ~~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 **inform** ~~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.~~

**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 two 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.

**Paid Meal Period**

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 Corrections 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 |
| Corrections Canada (CX) | 30 minute paid meal period |
| Royal NFLD Constabulary | 60 minute paid meal period/90 minutes for 12 hr shift |
| Saint John, NB | 90 minutes on 12 hr 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 |

| Organizations | 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 |
| Vancouver Metro | 60 minute paid meal period |
| City of Winnipeg | 30 minute paid meal period |
| Charlottetown Police | 45 minute paid meal for 10 to 12 hr shift, 30 minutes on 8 hr |

(Exhibit R)

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 Corrections 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.

**Day Work**

With respect to day workers, there are two major problems. First, there are CBSA workplaces across Canada where employees have worked under a ‘variable hours’ (or more commonly known in the bargaining unit as ‘compressed work-week’) scheduling regime for many years. This is true for Trade Compliance Officers, Inland Enforcement, Investigations, Intelligence, Program Officers and others. The ability to work compressed hours is provided under 25.09 of the collective agreement. Such arrangements are common in the unionized federal public service, to the point that in some departments and workplaces there are more employees working compressed weeks than not – including some CBSA workplaces.

The issue that has arisen with respect to compressed workweeks has been CBSA management’s unilateral revoking of such scheduling arrangements in many workplaces, often with little or no explanation whatsoever. The revoking of these arrangements has been disruptive to the affected employees’ lives, particularly for those who have been working under such scheduling arrangements for a considerable period of time.(Exhibit 72)

What the Union is proposing to rectify this problem is simple: that requests for such arrangements not be unreasonably denied. The Union recognizes that there are operational settings and situations where such arrangements are not feasible. However when long-standing scheduling arrangements are going to be modified or revoked, or when new requests are going to be denied, there should at the very least be a reasonable explanation provided to those affected. The Union submits that a right that is as commonplace as compressed work weeks at CBSA should not be uniquely at management’s discretion. What’s more, according to the Canadian Centre for Occupational Health and Safety, flexible working arrangements have been reported in many studies as being beneficial to both employees and employers.

Common findings include:

- Increased ability to attract, retain and motivate high-performing and experienced employees.
- Reduced absenteeism.
- Helps employees manage their responsibilities outside of work.
- Increased job satisfaction, energy, creativity, and ability to handle stress.

(http://www.ccohs.ca/oshanswers/psychosocial/flexible.html)

Thus the Union submits that promoting and allowing such arrangements where feasible is not only in the interests of the employees, but indeed the CBSA as well.

Also with respect to day workers, the Union is proposing that employees would have the option of starting their work day as early as 6 am, subject to operational requirements. For those employees living and working in large urban areas such as the GTA, Vancouver and Montreal, the ability to start work an hour early would provide potential opportunities for greater work-life balance via reduced time spent commuting to and from work. As is the case with the Union's proposal for 25.09, such an arrangement would only be available where operationally feasible.

The day worker proposals being made for 25.06 and 25.09 would come at no additional cost to the employer and with no operational prejudice. Quite frankly the Union has difficulty understanding why the employer has refused outright to agree to them.

Lastly 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.

**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, the filing of vacant lines and paid firearm training time.

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 34) 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, Exhibit 35). The implementation of a schedule based on 25.13 and 25.22 at Calgary International Airport in 2010 was disruptive to the point that some travellers entering the country were subjected to a 3-hour wait to enter the country. (Exhibit 36) There have also been problems due to the imposing of schedules on workers in Lansdowne, Ontario in 2010.

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 37)

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 38)

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 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, in the spring of 2013 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 came forward expressing an interest in working the shifts at Chief Mountain. As a result the shifts were offered to the employees, however mere days before the employees were to be assigned to work the shifts they were told that the shifts had instead 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.

**Employer Proposals**

With respect to 25.05, the employer is proposing to upend a practice that has been in effect for a very long time, and in doing so effectively carve out the FB bargaining unit from an important protection and benefit provided under a National Joint Council directive. The employer has provided no demonstrated need whatsoever as to why such a drastic modification is necessary.

Concerning 25.12, 25.21 and 25.23 scheduling issues have been hugely contentious for the FB bargaining unit over the years. As a result the Union is seeking improvements to Article 25, as articulated above. 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, 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 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.

**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 some protection around employee access to compressed work weeks.

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.

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, and that the employer's not be included.

***ARTICLE 27***
***SHIFT AND WEEKEND PREMIUMS***

**PSAC PROPOSAL:**

**ARTICLE 27**
**SHIFT AND WEEKEND PREMIUMS**

**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 ($2.00)~~ **three dollars ($3.00)** 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 ($2.00)~~ **three ($3.00)** 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:**

A majority of 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 2002 -

over fifteen years. While wages have been adjusted substantially over the same period of time, shift and weekend premiums have remained unchanged.

This has not been the case with other PSAC bargaining units. For example, since 2010 PSAC 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. What's more, all of these workers perform duties that provide for much lower compensation in comparison to those performed by workers in the FB bargaining unit. Some of these increases were achieved via PSLRB arbitral awards. (Exhibit 39).

Also of significant importance is the fact that Treasury Board agreed *over this cycle of negotiations* to increase shift and weekend premium considerably for the Ship Repair West group, a group which already received superior compensation for evening and weekend work. (Exhibit 40).

What the Union is proposing is that shift and weekend premiums be increased from $2.00 to $3.00 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.

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 he PSLRB.

Consequently the Union respectfully requests that its proposal be included in the panel's recommendation.

***ARTICLE 28***
***OVERTIME***

**PSAC PROPOSAL:**

**ARTICLE 28**
**OVERTIME**

**28.02 General**

(a) An employee is entitled to overtime compensation under clauses 28.04 and 28.05 for each completed period of fifteen (15) minutes, **or portion thereof,** of overtime worked by him or her when:

(i) the overtime work is authorized in advance by the Employer or is in accordance with standard operating instructions;

and

(ii) the employee does not control the duration of the overtime work.

(b) Employees shall record starting and finishing times of overtime work in a form determined by the Employer.

(c) For the purpose of avoiding the pyramiding of overtime, there shall be no duplication of overtime payments for the same hours worked.

(d) Payments provided under the overtime, designated paid holidays and standby provisions of this Agreement shall not be pyramided, that is, an employee shall not be compensated more than once for the same service.

28.03 Assignment of Overtime Work (**Union Counter-Proposal – 02/03/16)**

(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.**

**(c) Should there not be sufficient employees obtained in the manner described in paragraph (a), the Employer shall assign the overtime consistent with processes mutually agreed upon at the local level.**

**(d) Should the parties be unable to agree upon a process for assigning overtime at the local level consistent with paragraph (c), the Employer shall assign overtime in reverse order of service among readily available qualified employees.**

**(e**) Except in cases of emergency, call-back or mutual agreement with the employee, the Employer shall, wherever possible, give at least **twenty** four (**2**4) hours' notice of any requirement for overtime work.

**28.04 Overtime Compensation on a workday**

Subject to paragraph 28.02(a):

(a) an employee who is required to work overtime on his or her scheduled workday is entitled to compensation at time and one-half (1 1/2) for the first seven decimal five (7.5) consecutive hours of overtime worked and double (2) time for all overtime hours worked in excess of seven decimal five (7.5) consecutive hours of overtime in any contiguous period;

(b) if an employee is given instructions during the employee's work day to work overtime on that day and reports for work at a time which is not contiguous to the employee's scheduled hours of work, the employee shall be paid ~~a~~ minimum of ~~two (2) hours' pay at straight-time~~ **four (4) hours' pay at the applicable overtime rate of pay,** or for actual overtime worked, whichever is the greater;

(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 (3)~~ **four (4)** hours' pay at the applicable overtime rate of pay for each call-back ~~to a maximum of eight (8) hours' compensation in an eight (8) hour period; such maximum shall include any reporting pay pursuant to paragraph (b) or its alternate provision;~~

or

(ii) compensation at the applicable overtime rate for actual overtime worked,provided that the period worked by the employee is not contiguous to the employee's normal hours of work;

(d) ~~the minimum payment referred to in subparagraph (c)(i), does not apply to part-time employees . Part-time employees will receive a minimum payment in accordance with clauses 60.05 or 60.06.~~

**28.05 Overtime Compensation on a day of rest**

Subject to paragraph 28.02(a):

(a) an employee who is required to work on a first (1st) day of rest is entitled to compensation at time and one-half (1 1/2) for the first (1st) seven decimal five (7.5) hours and double (2) time thereafter;

(b) an employee who is required to work on a second (2nd) or subsequent day of rest is entitled to compensation at double (2) time (second or subsequent day of rest means the second or subsequent day in an unbroken series of consecutive and contiguous calendar days of rest);

**(c)** when an employee is required to ~~report for~~ work ~~and reports~~ on a day of rest, the employee shall be paid **a minimum of four (4) hours pay at the applicable overtime rate for each reporting.**

~~(i) compensation equivalent to three (3) hours' pay at the applicable overtime rate for each reporting to a maximum of eight (8) hours' compensation in an eight (8) hour period,~~

~~or~~

~~(ii) compensation at the applicable overtime rate;~~

~~(d) the minimum payment referred to in subparagraph (c)(i), does not apply to part-time employees. Part-time employees will receive a minimum payment in accordance with clause 60.05;~~

**28.07 Meals (Amended proposal 11-04-2016)**

(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 ~~ten~~ **twelve** dollars **and fifty** ($10) **($12.50)** 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 ~~ten~~ **twelve** dollars **and fifty cents** ~~($10)~~ **($12.50)** 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.

**EMPLOYER 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) **Should there not be sufficient employees obtained in the manner described in paragraph (a) the employer shall have the right to assign overtime.**

(b) Except in cases of emergency, call-back or mutual agreement with the employee, the Employer shall, wherever possible, give at least four (4) hours' notice of any requirement for overtime work.

**RATIONALE:**

There are several components to the Union's proposal for Article 28. First, the Union is proposing that employees not be required to work time for the Employer without

receiving compensation for that work. Second, the Union is proposing to modify 28.03 in order to ensure transparency with respect to overtime opportunities and assignment, and to introduce a mechanism for when there are insufficient volunteers. Third, the Union is proposing that reporting pay reflect what the parties have agreed to for call-back situations. Fourth, the Union is proposing that reporting pay apply to part-time employees. Lastly, the Union is proposing an increase in overtime meal allowance.

With respect 28.02, the Union is proposing that an employee be compensated for each 15 minutes of overtime worked, or portion thereof. The reason for this proposal is that there are situations when employees work 10 or more minutes of overtime and receive no compensation for that time worked. Article 62.02 of the collective agreement states that employees are to be paid for services rendered. Under the current 28.02 that is not necessarily the case. The Union's proposal would address this inconsistency.

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 Union is also proposing to modify 28.03 to address a problem that has surfaced over the life of the current agreement – that of excessive overtime.

Due to the on-going recruitment, retention and short-staffing problems that have plagued CBSA over the last several years, the amount of overtime required at a number of ports has increased dramatically. In the past lack of volunteers has rarely – if ever – been an issue at CBSA work locations. However that began to change over the life of the current agreement, particularly in the wake of the Deficit Reduction Action Plan cuts implemented during the last years of the Harper regime.

The problem is that the collective agreement states that the employer will offer overtime on an equitable basis, but does not address what happens when no employee wishes to work the overtime. To rectify this problem the Union is proposing that, in the event there are insufficient volunteers to work the overtime, the employer shall assign it to the least senior, qualified and readily available employee. The parties have agreed on years of service recognition for hours of work assignment, vacation scheduling and participant selection for firearm training. The Union sees no cogent explanation why the same principle should not be applied in the context of lack of overtime volunteers.

With respect to 28.04 b) and 28.05 c), the Union is proposing that compensation for employees who work on a day of rest or who are required to return to work be analogous to what is paid to employees in a call-back situation. Whether or not an employee 'reports' is immaterial, as it is for the work that employees are compensated, and indeed there are employees that perform duties that can be performed from their place of residence. Consequently the Union's proposal ensures that if an employee is required to work on his or her day of rest, or is required to return to work, then he or she shall be compensated appropriately.

The proposed changes to Article 28.05 would also ensure that part-time employees access the same compensation for overtime worked on a workday or a day of rest. As previously indicated, part-time employees represent a growing population within the

bargaining unit, and the Employer has provided no cogent rationale as to why part-timers should not be able to avail themselves of the same rights as full-time employees in this regard.

The changes proposed for 28.05 would resolve other on-going issues with respect to compensation when employees are required to return to work. There are two problems currently. First, 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 41) 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 for this group has not been increased since June of 2002 – over fifteen years ago. What's more, the increase at that time was a mere 50 cents. An increase in overtime meal allowance is well overdue.

Overtime meal allowance for shift workers has been increased several times via PSLRB interest arbitration for a number of PSAC groups over the last several years.(Exhibit 42) The Union submits the same should apply here.

With respect to the employer's proposal, the Union has its own proposal for the distribution of overtime, and unlike the employer's, the Union's provides a fair and equitable system for assigning the overtime, one that is consistent with what the parties have agreed to elsewhere in the agreement for the purposes of assigning work hours.

The proposals made with respect to Article 28 would ensure transparency, fairness, fix problems and provide for an overtime meal allowance increase that is long overdue.

Therefore the Union respectfully requests that the Commission include said proposals in its recommendation.

***ARTICLE 30***
***DESIGNATED PAID HOLIDAYS***

**PSAC PROPOSAL:**

**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) Canada Day;
(f) Labour Day;
(g) the day fixed by proclamation of the Governor in Council as a general day of thanksgiving;
(h) Remembrance Day;
(i) Christmas Day;
(j) Boxing Day;
(k) ~~one~~ **two (2)** additional day**s** 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**s** ~~is~~ **are** recognized as a provincial or civic holiday, **the third Monday in February and** the first (1st) Monday in August;
(l) **any** additional day when proclaimed by an Act of Parliament as a national holiday.

**30.05 Unless otherwise mutually agreed upon between the Employer and the employee, and** where operational requirements permit, the Employer shall not schedule an employee to work on both December 25 and January 1 in the same holiday season.

**30.07**

(a) When an employee works on a holiday, he or she shall be paid time and one-half (1 1/2) for all hours worked up to seven decimal five (7.5) hours and double (2) time thereafter, in addition to the pay that the employee would have been granted had he or she not worked on the holiday;

or

(b) upon request ~~and with the approval of the Employer~~, the employee may be granted:

(i) a day of leave with pay (straight-time rate of pay) at a later date in lieu of the holiday;

and

(ii) pay at one and one-half (1 1/2) times the straight-time rate of pay for all hours worked up to seven decimal five (7.5) hours;

and

(iii) pay at two (2) times the straight-time rate of pay for all hours worked by him or her on the holiday in excess of seven decimal five (7.5) hours.

(c) Notwithstanding paragraphs (a) and (b), when an employee works on a holiday contiguous to a day of rest on which he or she also worked and received overtime in accordance with paragraph 28.05(b), he or she shall be paid, in addition to the pay that he or she would have been granted had he or she not worked on the holiday, two (2) times his or her hourly rate of pay for all time worked.

(d) Subject to operational requirements and adequate advance notice, the Employer shall grant lieu days at such times as the employee may request.

(i) When, in a fiscal year, an employee has not been granted all of his or her lieu days as requested by him or her, at the employee's request, such lieu days shall be carried over for one (1) year.

(ii) In the absence of such request, unused lieu days shall be paid off at the employee's straight-time rate of pay in effect when the lieu day was earned.

**30.09 Scheduling of Shift-Working Employees on a Designated Holiday**

**a) Unless on leave or subject to 30.05, employees shall be scheduled to work a designated paid holiday consistent with the pre-established pattern, according to the existing schedule.**

**b) In the event that there are more employees scheduled to work a designated paid holiday than is needed, the Employer shall canvass employees scheduled to work the holiday to determine if there are volunteers who wish to have the day off. In the event that there are excessive volunteers, years of service will be used as the**

**determining factor to select which employees shall be granted the day off.**

c) **In the event there are insufficient or no volunteers after the Employer has canvassed consistent with c) above, the employees with the least amount of service shall be given the day off.**

d) **Should the Employer require employees to work the holiday after it has given employees the day off, the Employer shall first offer the shift(s) to be worked to employees that were initially scheduled to work the holiday and were subsequently given the day off consistent with b) and c) above, before offering the hours consistent with Article 28 Overtime.**

**30.10 Consistent with Article 25.21, the Employer shall make every reasonable effort to ensure that the process outlined in 30.09 is undertaken at least seven (7) days prior to the designated paid holiday.**

**RATIONALE:**

The proposals being made by the Union for Article 30 are intended to rectify on-going problems in the workplace and to bring designated paid holidays in line with what is found in other law enforcement collective agreements.

With respect to 30.09, the Union is proposing to solve on-going problems in the context of what is known in the lexicon of the bargaining unit as “H”ing. Under the parties’ collective agreement, all full-time employees are paid for a designated paid holiday, and those who are required to work on a designated paid holiday are subject to additional compensation consistent with Article 30 and the overtime clauses of the collective agreement. A majority of the employees in the FB group are shift workers working at ports of entry, and consequently it is common for employees to be required to work designated paid holidays. Given the scheduling regime that most shift working employees work under, it is also common for employees to know well in advance whether or not the shift pattern they are working will have them scheduled to work the holiday or not.

The problem that has arisen is that employees are often notified, in many cases with a week's or less advance notice, that they are being "H"'ed – which means literally that an "H" has been written on their shift on the schedule, meaning that they are no longer working on the holiday. The means via which the employer selects who gets H'ed and who doesn't is at management's discretion. What's more, there have been instances when employees have been H'ed only to be subsequently told that they will be required to work the holiday. That too is at management's discretion.

Not only are these changes disruptive for employees, but they also have a financial impact in that workers that work a designated paid holiday under the parties' agreement get overtime in addition to base pay when working a holiday. Consequently 'H'ing has been a controversial practice and a source of considerable frustration in the workplace.

There are rules in the collective agreement with respect to how shifts and overtime are allocated. These protections were inserted into the collective agreement to ensure fairness and to solve problems. What the Union is proposing is to simply introduce the same mechanism that is in place for shift and vacation scheduling for dealing with 'H'ing situations. The employer solicits volunteers when needed, and years of service is applied. If the employer determines subsequent to 'H'ing that it in fact does need additional employees to work the holiday, it would then first approach those who have been 'H'ed to seek volunteers, and in the absence of volunteers follow a prescribed process.

The current agreement provides rules with respect to the allocation of overtime and straight-time shifts. The parties over the course of this round of bargaining have agreed upon seniority rights for the purposes of the assigning of additional hours to part-timers.(Exhibit 43) These rules were arrived at and agreed upon to resolve problems in the workplace with respect to how hours are assigned. The 'H'ing problem now also needs rectifying.

The Union submits that there has been no cogent rationale provided by the employer as to why what's being proposed should not be introduced into the parties' agreement. Indeed, similar arrangements have been agreed to at the local level in several CBSA ports of entry, particularly in Southwestern Ontario.

Also with respect to Article 30, the Union is proposing an additional designated paid holiday. The reason for this proposal is that the vast majority of employees in the bargaining unit work in provinces where a designated paid holiday exists that these employees do not get off. In Ontario, Manitoba, Alberta, Prince Edward Island, Saskatchewan, Nova Scotia and the Yukon the third Monday in February is a provincial holiday, 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 due to their not having access to the holiday.

Lastly the Union is proposing to modify 30.03 to provide for employees to have the opportunity to work both Christmas Day and New Year's Day if they so choose. The Union sees no reason as to why employees must be forced to schedule a day off if they do not want to, and indeed for some employees the current language requires that they make up a day later in the schedule to compensate for the unwanted day off.

What the Union is proposing for Article 30 would resolve problems in the workplace and, in the case of 'H"ing and 30.03, would come at no additional cost to the employer. In the case of 30.02, the Union is simply proposing that employees be provided the same holiday that is already being provided for other workers across Canada.

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

***ARTICLE 32***
***TRAVELLING TIME***

**PSAC PROPOSAL:**

**Amend as follows:**

**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 44)

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 33***
***LEAVE GENERAL***

**PSAC PROPOSAL:**

**Amend as follows:**

**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:**

With respect to the Union's proposal for 33.02, it would ensure that employees do not suffer a break in continuous service for employees that are required to take leave for military service or leave for care of the family. 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 over the life of the current agreement 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 is also proposing that employees not lose service for time spent caring for a family member. Currently employees do not suffer any loss in service for maternity or parental leave. The Union proposes that the same apply for employees who have to take leave without pay to care for a member of their family. Such circumstances are beyond an employee's control, and the employee is already suffering financial consequences for taking such a leave, the Union submits that these employees should not suffer a loss in service as well as a result.

Lastly the Union's proposal for 33.01 is consistent with its proposal concerning 'a day is a day', the rationale for which is provided later in this brief.

The proposals contained in Article 33 would ensure fairness in that employees required to take leave for reasons largely beyond their control would not suffer a loss in service accrual. The Union requests that the panel include it in its proposal.

***ARTICLE 34***
***VACATION LEAVE WITH PAY***

**PSAC PROPOSAL:**

**ARTICLE 34**
**VACATION LEAVE WITH PAY**

**Amend as follows:**

**ARTICLE 34**
**VACATION LEAVE WITH PAY**

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**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:

| **Conversion Examples** | |
|---|---|
| **3 weeks** | **9.375 hours** |
| **4 weeks** | **12.5 hours** |
| **5 weeks** | **15.625 hours** |
| **6 weeks** | **18.75 hours** |

(a) nine decimal three seven five (9.375) hours 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 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 commencing with the month in which the employee's ~~eighteenth (18th)~~ **tenth (10th)** anniversary of service occurs;

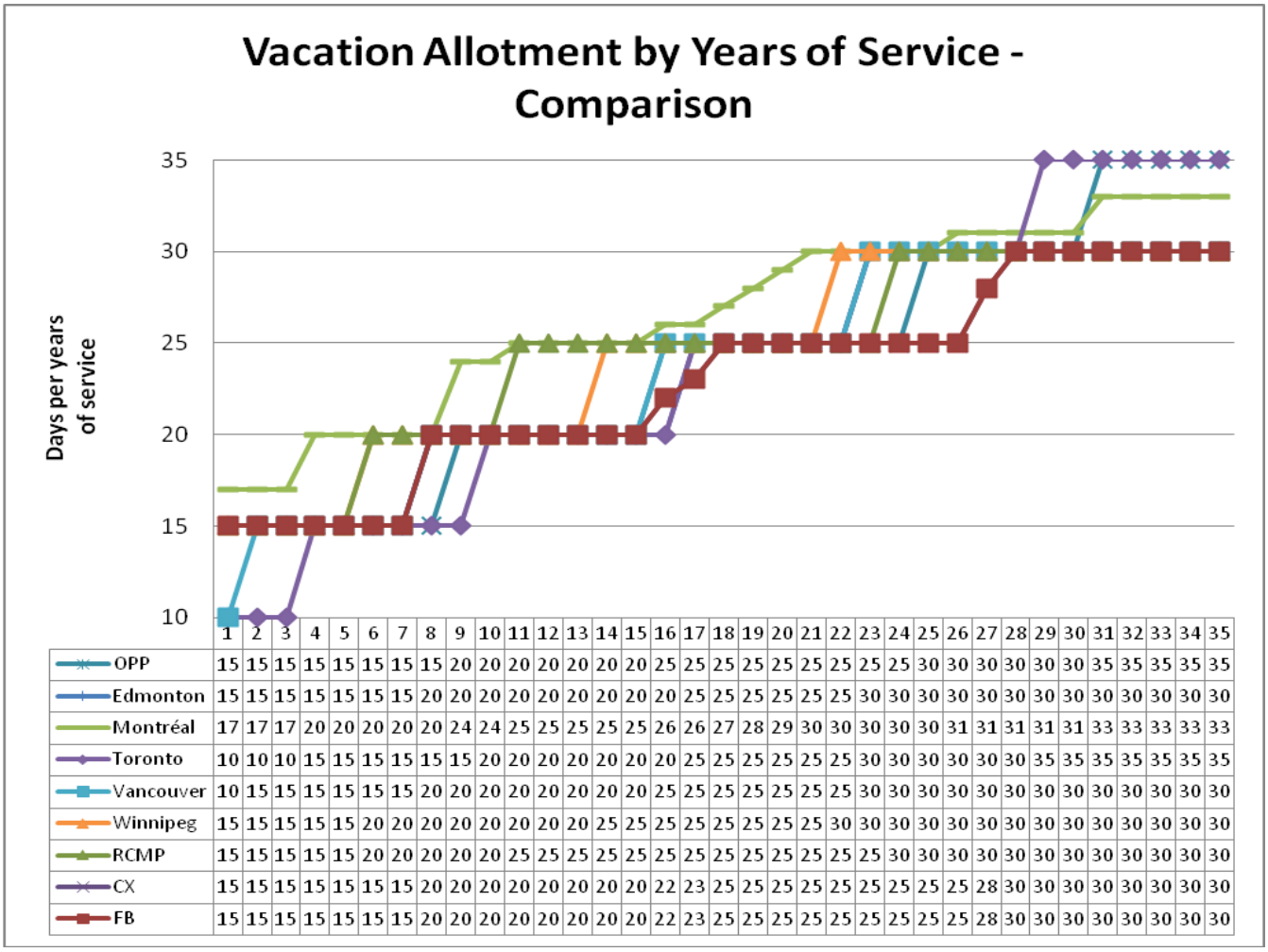
~~(f) sixteen decimal eight seven five (16.875) hours commencing with the month in which the employee's twenty-seventh (27th) anniversary of service occurs;~~

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

**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.




| | 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 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 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 | 30 | 30 | 30 | 30 | 30 | 30 | 35 | 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 |
| Montréal | 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 | 20 | 25 | 25 | 25 | 25 | 25 | 25 | 30 | 30 | 30 | 30 | 30 | 30 | 35 | 35 | 35 | 35 | 35 | 35 | 35 |
| Vancouver | 10 | 15 | 15 | 15 | 15 | 15 | 15 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 30 | 30 | 30 | 30 | 30 | 30 | 30 | 30 | 30 | 30 | 30 | 30 | 30 |
| Winnipeg | 15 | 15 | 15 | 15 | 15 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 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 | 25 | 30 | 30 | 30 | 30 | 30 | 30 | 30 | 30 | 30 | 30 | 30 |
| CX | 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 | 25 | 28 | 30 | 30 | 30 | 30 | 30 | 30 | 30 |
| 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 | 25 | 28 | 30 | 30 | 30 | 30 | 30 | 30 | 30 |

Data source: RCMP Pay Council, The RCMP Total Compensation Report, December 2011 (Exhibit 6).

As the above table illustrates, the overall current vacation entitlement for the FB Group falls below other law enforcement personnel elsewhere in the broader public service[5]. The PSAC proposal seeks to close that gap by matching the annual leave accrual system currently in place for Regular Members of the RCMP.

[5] 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 12 hrs shift for Halifax.

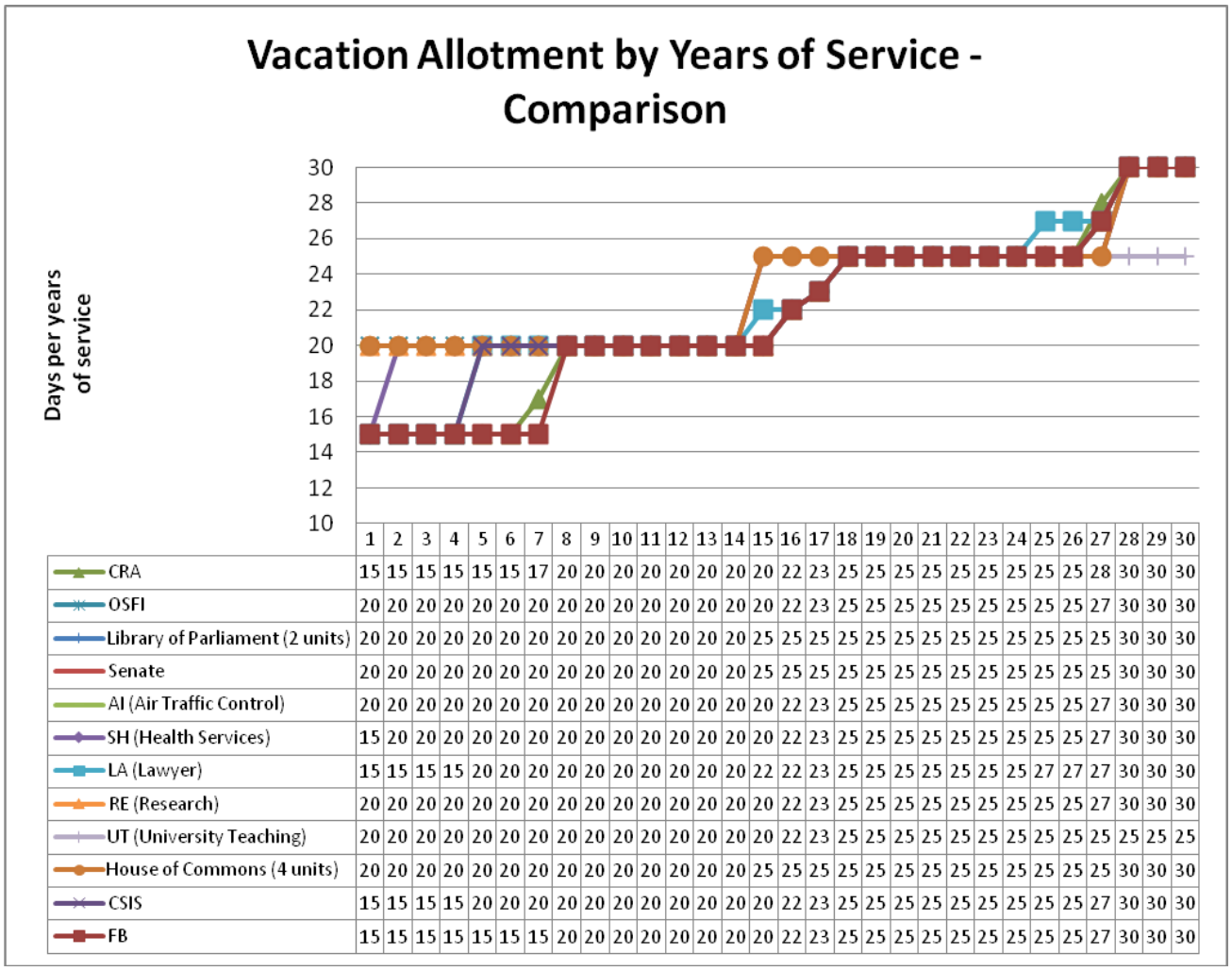
| Years | Is the current entitlement equal or below RCMP? | Net Days - current | Net Days - proposed |
|---|---|---|---|
| 1-5 | Equal | 0 | 0 |
| 6-7 | Below by five days | 10 | 0 |
| 8-10 | Equal | 0 | 0 |
| 11-15 | Below by five days | 25 | 0 |
| 16 | Below by 3 days | 3 | 0 |
| 17 | Below by 2 days | 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, an employee of the FB bargaining unit would receive 11.5 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 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.

Furthermore, not only are vacation leave allotments inferior to what is afforded other law enforcement personnel elsewhere in the broader public service, as the chart below

illustrates they are also on the aggregate inferior to what is currently afforded to other federal workers, including in the core public 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 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| CRA | 15 | 15 | 15 | 15 | 15 | 15 | 17 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 22 | 23 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 28 | 30 | 30 | 30 |
| OSFI | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 22 | 23 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 27 | 30 | 30 | 30 |
| Library of Parliament (2 units) | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 30 | 30 | 30 |
| Senate | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 30 | 30 | 30 |
| AI (Air Traffic Control) | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 22 | 23 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 27 | 30 | 30 | 30 |
| SH (Health Services) | 15 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 22 | 23 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 27 | 30 | 30 | 30 |
| LA (Lawyer) | 15 | 15 | 15 | 15 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 22 | 22 | 23 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 27 | 27 | 27 | 30 | 30 | 30 |
| RE (Research) | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 22 | 23 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 27 | 30 | 30 | 30 |
| UT (University Teaching) | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 22 | 23 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 25 |
| House of Commons (4 units) | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 30 | 30 | 30 |
| CSIS | 15 | 15 | 15 | 15 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 20 | 22 | 23 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 27 | 30 | 30 | 30 |
| 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 | 27 | 30 | 30 | 30 |

Source: See Exhibit 8

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 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[6].

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.

[6] 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 4 collective agreements with the House of Commons 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 45)

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

## *ARTICLE 39*
## *MATERNITY-RELATED REASSIGNMENT OR LEAVE*

**PSAC PROPOSAL:**

**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 (24th) week following the birth, request the Employer to 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 that of the fetus 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 43.01 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 avoid in order eliminating 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 43.01 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.

**RATIONALE:**

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 foetus, 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. In light of this, the Union respectfully requests that its proposal for maternity-reassignment be included in the Commission's recommendation.

## *ARTICLE 48*
## *PERSONEL SELECTION LEAVE*

**PSAC PROPOSAL:**

## ARTICLE 48
## PERSONEL SELECTION LEAVE

**New:**

**48.02** Where possible, examinations conducted by the Employer shall be scheduled during the employee's regular work hours.

## *ARTICLE 49*
## *EDUCATION LEAVE WITHOUT PAY*

**PSAC PROPOSAL:**

**Amend as follows:**

## ARTICLE 49
## EDUCATION LEAVE WITHOUT PAY

**49.01** The Employer recognizes the usefulness of education leave. Upon written application by the employee and with the approval of the Employer, an employee may be granted education leave without pay for varying periods of up to one (1) year, which can be renewed by mutual agreement, to attend a recognized institution for studies in some field of education in which preparation is needed to fill the employee's present role more adequately or to undertake studies in some field in order to provide a service which the Employer requires or is planning to provide. **Such requests shall not be unreasonably denied.**

**49.04 In the event there are more requests subject to 49.01 than the Employer can accommodate, years of service shall be the determining factor for the granting of such requests.**

**49.05 The Employer shall not unreasonably deny employee requests for leave without pay for educational opportunities outside of those that meet the criteria contained in 49.01.**

## *ARTICLE 50*
## *CAREER DEVELOPMENT LEAVE*

**PSAC PROPOSAL:**

**Amend as follows:**

## ARTICLE 50
## CAREER DEVELOPMENT LEAVE

**50.01** Career development refers to an activity which ~~in the opinion of the Employer,~~ is likely to be of assistance to the individual in furthering his or her career development and to the organization in achieving its goals. The following activities shall be deemed to be part of career development:

(a) a course given by the Employer;

(b) a course offered by a recognized academic institution;

(c) a seminar, convention or study session in a specialized field directly related to the employee's work.

**50.02** Upon written application by the employee and with the approval of the Employer, career development leave with pay may be given for any one of the activities described in clause 50.01. **Such requests shall not be unreasonably denied.** The employee shall receive no compensation under Article 28, Overtime, or Article 32, Travelling Time, during time spent on career development leave provided for in this Article.

**50.03** Employees on career development leave shall be reimbursed for all reasonable travel and other expenses incurred by them ~~which the Employer may deem appropriate~~.

**50.04 In the event there are more requests subject to 50.01 than the Employer can accommodate, years of service shall be the determining factor for the granting of such requests.**

## *ARTICLE 51*
## *EXAMINATION LEAVE WITH PAY*

**PSAC PROPOSAL:**

**Amend as follows:**

## ARTICLE 51
## EXAMINATION LEAVE WITH PAY

**51.01** ~~At the Employer's discretion~~, **E**xamination leave with pay ~~may~~ **shall** be granted to an employee for the purpose of writing an examination which takes place during the employee's scheduled hours of work.

**51.02 Where possible, examinations conducted by the Employer shall be scheduled during the employee's regular working hours.**

**RATIONALE:**

There has been considerable frustration over the duration of this past collective agreement stemming from CBSA's refusal to prioritize career advancement and educational opportunities for staff. As indicated earlier in the brief, a significant majority of front line personnel at CBSA polled in 2014 felt that CBSA does not do a good job of supporting career development, and that there are limited career advancement opportunities at CBSA.

The problem stems primarily from CBSA management's refusal to grant such leaves, or that when such leaves are granted amongst interested employees they are not granted in a fair manner.

The current language in the parties' collective agreement provides CBSA management full discretion in the granting of such leaves, and as a result career development and the educational opportunities of employees are effectively at the whim of CBSA managers. A combination of short-staffing and a dysfunctional management/employee culture in many CBSA workplaces has led to on-going problems associated with employees

accessing opportunities of this nature, to the point where grievances have been filed in a number of instances (Exhibit 46).

What the Union is proposing is simple: That opportunities for educational and career development leaves not be unreasonably denied, and that when there are more requests than can be reasonably accommodated, then years of service will be the determining factor for allocating the leave.

As previously stated, years of service under the parties' current agreement is the determining factor for shift assignment, the allocation of additional hours to part-times, participant selection for firearm training and the scheduling of vacation leave. The Union sees no cogent reason as to why it should not also be applied in the event that there are excessive requests for career development and educational leave.

With respect to making every reasonable effort to accommodate requests, this same concept is already applied to the granting and scheduling of vacation leave. The Union sees no reason as to why it should not be applied in the case of career and educational leaves as well.

Lastly with respect to career advancement matters, the Union is proposing that examination leave and personnel selection leaves shall be granted on a reasonable basis, and that the Employer will make every effort to schedule such activities during an employees scheduled work hours. A majority of employees in the FB bargaining unit are shift workers, and as a result a number of instances have arisen where the employer has unreasonably refused to accommodate requests for these opportunities to be provided during an employee's working hours and instead had such activities take place during non-work hours. The effect of scheduling such activities during non-work hours is that either employees are required to come in on their day off without pay, or if it is with pay, it can have a negative effect on the balancing of hours over an employee's schedule.

The Union recognizes that the CBSA cannot grant every request that is submitted for career development and educational leaves. The Union also recognizes that not every examination can take place during an employee's scheduled work hours. What the Union is proposing is that reasonable efforts be made on the part of the CBSA to accommodate such requests, and that there be a fair and transparent process for granting such leaves when not all requests can be accommodated. The Treasury Board has indicated that career advancement and development are important priorities.(Exhibit 47) The Union submits that if the Treasury Board is serious about such matters it can and should agree to what the Union has proposed with respect to career advancement, educational eave, examination leave and personnel selection leave.

In light of these facts, the Union respectfully requests that the panel include the Union's proposals concerning these issues in its recommendation.

## *ARTICLE 52*
## *LEAVE WITH OR WITHOUT PAY FOR OTHER REASONS*

**PSAC PROPOSAL:**

**Amend as follows:**

### ARTICLE 52
### LEAVE WITH OR WITHOUT PAY FOR OTHER REASONS

**New:**

**52.xx Leave Without Pay for Military Service**

**Employees required to take leave without pay for military service shall not suffer any break in continuous service for such leave.**

**52.xx Leave with Income Averaging (Union Proposal – September 10, 2014)**

**a) The Employer's Leave with Income Averaging Directive, as constituted on June21, 2014, 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.**

**RATIONALE:**

The Union's proposals for Article 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.

With respect to the Union's proposal for 52.xx Leave for Military Service, it would ensure that employees do not suffer a break in continuous service for employees that are required to take leave for military service. As stated in the Union's rationale for Article

32 proposals, 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 over the life of the current agreement 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, in conjunction with its proposal on the same issue for Article 32, would ensure that does not happen.

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 Article 52 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.

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

***ARTICLE 53***
***RESTRICTION ON OUTSIDE EMPLOYMENT***

**PSAC PROPOSAL:**

**Amend as follows:**

**ARTICLE 53**
**RESTRICTION ON OUTSIDE EMPLOYMENT**

**53.01** ~~Unless otherwise specified by the Employer as being in an area that could represent a conflict of interest~~, **E**mployees shall not be restricted in engaging in other employment outside the hours they are required to work for the Employer, **unless such employment represents a conflict on interest.**

**RATIONALE:**

As has been the case with a number of other issues outstanding between the parties where matters are left to employer discretion, there have been instances where employees have been told that employment pursued outside their working hours at CBSA is being restricted or denied without reasonable justification.(Exhibit 48)

The Union recognizes that, given the sensitive work performed by members of the bargaining unit, there is potential for conflict of interest. However the current language does not provide recourse for an employee to challenge a decision made by management in this regard when the decision is made on frivolous and unjustifiable grounds. The Union's proposal would rectify this problem. The employer can restrict an employee's outside employment, provided there are justifiable reasons to do so. If the Union or the employee believes management's restriction on their activities after hours to be without proper justification the Union's language provides recourse to employee and the Union that is not currently available. It is a proposal that ensures fairness and reasonableness for employees while at the same time providing the employer the ability to protect he security interests of Canadians.

In light of these facts, the Union respectfully requests that its proposal be included in the Commission’s recommendation.

***ARTICLE 56***
***EMPLOYEE PERFORMANCE REVIEW AND EMPLOYEE FILES***

**PSAC PROPOSAL:**

**Amend as follows:**

**ARTICLE 56**
**EMPLOYEE PERFORMANCE REVIEW AND EMPLOYEE FILES**

**56.01**

(a) When a formal assessment of an employee's performance is made, the employee concerned must be given an opportunity to sign the assessment form in question upon its completion to indicate that its contents have been read. A copy of the assessment form will be provided to the employee at that time. An employee's signature on his or her assessment form will be considered to be an indication only that its contents have been read and shall not indicate the employee's concurrence with the statements contained on the form.

(b) The Employer's representative(s) who assess(es) an employee's performance must have observed or been aware of the employee's performance for at least one-half (1/2) of the period for which the employee's performance is evaluated.

(c) An employee has the right to make written comments to be attached to the performance review form.

**56.02**

(a) Prior to an employee performance review the employee shall be given:

(i) the evaluation form which will be used for the review;

(ii) any written document which provides instructions to the person conducting the review;

(b) if during the employee performance review, either the form or instructions are changed they shall be given to the employee.

**New**

**56.03 When a report pertaining to an employee's performance or conduct is placed on that employee's personnel file, the employee concerned shall be given:**

**a) A copy of the report placed on their file;**

**b) An opportunity to sign the report in question to indicate that its contents have been read; and**

**c) An opportunity to submit such written representations as the employee may deem appropriate concerning the report and to have such written representations attached to the report.**

**56.04 Any document or written statement critical of an employee's performance, which may have been placed on the employee's file(s), shall be destroyed after one (1) year has elapsed.**

**56.05 The employee shall be entitled to be accompanied by a Union representative during all discussions of the employee's performance.**

**56.06 Employees shall have the right to grieve their performance review.**

**56.07 Where an employee's annual performance evaluation or written performance objectives refer to a need for training in a particular subject area in order to fulfil a particular work related objective that employee shall be entitled to training required to ensure they can meet that objective.**

**Employee Files**

**56.10 i)**

Upon written request of an employee, the personnel file**(s)** of that employee shall be made available **for the employee's** ~~once per year for his or her~~ examination in the presence of an authorized representative of the Employer.

**<u>RATIONALE</u>:**

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. Like the proposals made for the aforementioned articles, what the Union is proposing for Article 56 is intended to provide employees with protections against management abuses, protections in many cases that are modeled on what has been agreed to elsewhere in the federal public sector.

With respect to 56.03, the Union is proposing language that would ensure transparency and provide an employee with the opportunity to submit written representations concerning what has been included in the employee's file. The Union's proposal for 55.04 provides for a sunset clause of one (1) year. Both of these proposals are consistent with what the Union has negotiated with Canada Post, another federal employer where employee/employer relations are notoriously dysfunctional.

The Union's proposal for 56.05 is consistent with proposals made by the Union concerning Article 17 Discipline – namely that in any meeting with management of an administrative or possibly disciplinary nature an employee shall be entitled to have a Union representative on hand for the discussion. The Union's proposal for 55.06 provides an employee the ability to grieve his or her performance review.

As recent evidence has clearly demonstrated – including the last two Public Service Employee Surveys – employee lack of faith in the CBSA and general concern regarding potential reprisal from CBSA management are extremely high. The Union's proposals for both 56.05 and 56.06 would ensure additional protections in meetings with management, as well as recourse when an employee feels that he or she has been unjustly evaluated.

Proposals for 56.07 would ensure that an employee is provided the training necessary when an employee's evaluation suggests that additional training would be beneficial or required, while 56.08 ensures that an employee can have access to his or her file upon request. The employer has provided no explanation in negotiations as to why an employee is only entitled to see his or her file only once per year. Given that the file is

concerning his or her performance, the Union submits that the employee should be entitled to see the file as necessary.

Transparency and additional protections for employees in the context of management/employee relations are critical issues for the Union and its members in this round of negotiations. The proposal made for Article 56 are consistent with these objectives, are both fair and reasonable, and in many cases are predicated on what has been agreed to elsewhere in the federal public sector. Consequently the Union respectfully requests that these proposals be included in the Commission's recommendation.

***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 off shore. 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 60*
## *PART-TIME EMPLOYEES*

**PSAC PROPOSAL:**

### 60.10 Vacation Leave

A part-time employee shall earn vacation leave credits for each month in which the employee receives pay for at least twice (2) the number of hours in the employee's normal workweek, at the rate for years of service established in clause 34.02 of this Agreement, pro-rated and calculated as follows:

(a) when the entitlement is nine decimal three seven five (9.375) hours a month, .250 multiplied by the number of hours in the employee's workweek per month;

(b) when the entitlement is twelve decimal five (12.5) hours a month, .333 multiplied by the number of hours in the employee's workweek per month;

~~(c) when the entitlement is thirteen decimal seven five (13.75) hours a month, .367 multiplied by the number of hours in the employee's workweek per month;~~

~~(d) when the entitlement is fourteen decimal four (14.4) hours a month, .383 multiplied by the number of hours in the employee's workweek per month;~~

**(c)** when the entitlement is fifteen decimal six two five (15.625) hours a month, .417 multiplied by the number of hours in the employee's workweek per month;

~~(f) when the entitlement is sixteen decimal eight seven five (16.875) hours a month, .450 multiplied by the number of hours in the employee's workweek per month;~~

**(d)** when the entitlement is eighteen decimal seven five (18.75) hours a month, .500 multiplied by the number of hours in the employee's workweek per month.

**RATIONALE:**

The Union's proposal for Article 60 is commensurate with the Union's proposal to increase vacation leave quantum in Article 25 Vacation Leave.

***ARTICLE 62***
***PAY ADMINISTRATION***

**PSAC PROPOSAL:**

**Amend as follows:**

**ARTICLE 62**
**PAY ADMINISTRATION**

**62.07**

(a) When an employee is required by the Employer to substantially perform the duties of a higher classification level in an acting capacity and performs those duties for at least ~~three (3)~~ **one (1)** ~~consecutive working~~ day~~s~~ or shift~~s~~, the employee shall be paid acting pay calculated from the date on which he or she commenced to act as if he or she had been appointed to that higher classification level for the period in which he or she acts.

(b) When a day designated as a paid holiday occurs during the qualifying period, the holiday shall be considered as a day worked for purposes of the qualifying period.

**62.xx**

**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, the CRA being an employer where acting assignments are widespread. (Exhibit 49) 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.

With respect to 62.07, the current language concerning when an employee receives acting pay states that the benefit can only be accessed after 3 or more days or shifts have been worked in the acting assignment. What this has meant in practice is that an employee may work a weekend in an acting assignment, taking on the responsibilities associated with the position, and not receive any additional compensation for it. Indeed, the employee would not receive compensation commensurate with the job being undertaken on behalf of the employer.

Article 62.02 of the parties current agreement states that:

*An employee is entitled to be paid for services rendered at:*

(a) the pay specified in Appendix A for the classification of the position to which the employee is appointed, if the classification coincides with that prescribed in the employee's certificate of appointment;

or

(b) the pay specified in Appendix A for the classification prescribed in the employee's certificate of appointment, if that classification and the classification of the position to which the employee is appointed do not coincide.

The Union submits that the 3-day threshold contained in the current 62.07 is inconsistent with the current 62.02, in that an employee working in an acting assignment under the current language for 2 days is not being "paid for services rendered". The

Union’s proposal would rectify this inconsistency and ensure that employees being asked to perform duties in a higher classification be paid accordingly.

Given that what the Union is proposing for 62.xx is consistent with what has been negotiated with elsewhere in the federal public administration, and given that the current language providing for the 3-day threshold for acting pay is inconsistent with 62.02, the Union respectfully requests that its proposals for Article 62 be included in the Commission’s recommendation.

***"A DAY IS A DAY"***

**PSAC PROPOSAL:**

## ARTICLE 25
## HOURS OF WORK

### 25.27 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) 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) additional nights.

(b) The maximum number of days off earned under this clause shall not exceed five (5) 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.~~

(c) 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.

(d) Notwithstanding the above, in Article 46, Bereavement Leave with Pay, a “day” will mean a calendar day.

## *ARTICLE 42*
## *VOLUNTEER LEAVE*

**42.01** 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, ~~a single period of up to seven decimal five (7.5) hours~~ **one day** of leave with pay to work as a volunteer for a charitable or community organization or activity, other than for activities related to the Government of Canada Workplace Charitable Campaign;

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

## *ARTICLE 43*
## *LEAVE WITH PAY FOR FAMILY - RELATED RESPONSIBILITIES*

**43.~~02~~01** 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.

## *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, ~~a single period of up to seven decimal five (7.5) hours~~ **one day** of leave with pay for reasons of a personal nature.

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.

**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.

***NEW ALLOWANCES***
***PLAIN CLOTHES***

**PSAC PROPOSAL:**

**xx.01 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.**

**xx.02 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 50). 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 provides example of Plain Clothes Allowance in other major law enforcement agencies in Canada (Exhibit 51).

| Organizations | Plain Clothes Allowance |
|---|---|
| RCMP | Male: $2041.91 per year or $7.34 per day<br>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 | $6 per day working in plain clothes at the department's request |
| City of Edmonton | $1022 per year |
| Halifax Metro | $1600 per year |
| City of Montréal | 2.5$ of sergeant-detective salary with receipts ($2015 based on the salary eff. 2011-12-31 |
| Metro Toronto | $1125 per year with receipts –Can carry over unused balance into next year |

| Organizations | Plain Clothes Allowance |
|---|---|
| Peel Region | $1250 per year with receipts |
| Calgary Metro | $1000 per year –Includes dry cleaning |
| Saskatoon | $1050 per year |
| Vancouver Metro | $1070 per year or $4.05 per day |
| City of Winnipeg | $1147.85 per year subject to changes in CPI |
| Charlottetown Police | $1200 per year |

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 51)

In additional to external comparators, a plain clothes allowance has also established within the federal public administration, in that House of Commons Constables also have access to such an allowance.(Exhibit 51)

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.

In addition to the broader law enforcement community in Canada, there is significant precedent with respect to employers providing either clothing or allowances for the purchase of clothing required for employees to perform their duties, from the House of Commons to the Senate to Canada Post to the National Arts Centre (Exhibit 52).

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.

***NEW ALLOWANCES***
***DOG HANDLER***

**PSAC PROPOSAL:**

**xx.03 When an employee is required to handle a trained dog the employee shall be paid six dollars ($6.00) for each period in which the employee handles the dog for a minimum of one (1) hour within the first four (4) hours immediately after the commencement of the shift. The same amount shall be paid under the same conditions for any succeeding period of four (4) hours.**

**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 an important 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 (Exhibit 53).

What’s more, dog handlers are regular Border Services Officers. Unlike other major Canadian law enforcement agencies, CBSA dog handlers earn no extra compensation or allowance for performing this highly trained technical task.

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 no extra compensation for the fact that they must take care of the dog 24/7.

The following table provides example of Dog Handler Allowances in other major law enforcement agencies in Canada.

| 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. |
| Ottawa Metro | $1000 per year |
| Sûreté du Québec | $179 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 |

(Exhibit 22)

Indeed, with the exception of the dollar amount, the language proposed here is taken verbatim from the clause covering dog handlers contained in the Treasury Board agreement for the CX bargaining unit. The Union is proposing $6.00 as it has been a number of years since the $4.00 was introduced in the CX agreement. Thus the Employer has already agreed to an allowance for employees that handle dogs elsewhere in the federal public service.

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.

***NEW ALLOWANCES***
***ESCORTED REMOVALS***

**PSAC PROPOSAL:**

**25.12 c) Escorted Removals Premium**

**When an employee is assigned to escort a violator 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 (IRB).

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 and in some cases BSO's - 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 in excess of 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, with the exception of 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 in light of the conditions surrounding the performance of international escorts.

In light of this, the Union respectfully requests that its proposal be included in the Commission’s recommendation.

## *NEW ALLOWANCES*
## *FITNESS/WELLNESS ALLOWANCE*

**PSAC PROPOSAL:**

**Fitness/Wellness Allowance**

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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 such a facility free of charge on site.

## *ARTICLE 25*
## *HOURS OF WORK*

**PSAC PROPOSAL:**

**New:**

25.30 Firearm Practice Time

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:**

As law enforcement personnel, a majority of employees in the FB bargaining unit are required to meet certain physical standards as part of their employment (Exhibit 54). 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 a number of 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 the law enforcement community. For example, the metro police forces in Edmonton, Halifax, Toronto, Vancouver and Winnipeg all provide on-site fitness training facilities to officers. In the case of the RCMP fitness facilities are made available at a number of locations, while the City of Montreal provides on-site access in four precincts. 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 a number of locations. Thus what the Union is seeking here is commonplace in law enforcement.( Exhibit 55)

With respect to the standards applied by the CBSA in the context of annual firearm recertification, 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 effectively agency policy until four years ago.

The CBSA has put stringent standards in place for its front-line employees, both in the context of firearm recertification and with respect to physical fitness standards. The agency has acknowledged the need for employees to 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 (or reintroduced in the case of firearm practice time) and made accessible. Lastly, neither proposal is precedent setting, in that firearm practice time

was agency policy up until recently, while make resources available for fitness training is commonplace in collective agreements covering law enforcement personnel.

In light of these facts, the Union respectfully requests that the Commission include its proposals concerning these matters in its recommendation.

***NEW ALLOWANCES***
***DRY CLEANING***

**PSAC PROPOSAL:**

**Dry Cleaning allowance**

**xx.03 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:**

A majority of the 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 56). 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 why 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.

***APPENDIX "B"***
***VSSA's***

**PSAC PROPOSAL:**

**APPENDIX B**
***M.O.U. WITH RESPECT TO SHIFT SCHEDULING ARRANGEMENTS***

**PSAC PROPOSAL:**

**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 on variable shift schedule arrangements** ~~agreement at the local level,~~ within prescribed timeframes.

**EMPLOYER PROPOSAL:**

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.

**2. VSSA discussions**

**2.1** Local consultation pursuant to paragraph 25.24(a) of the agreement will take place within five (5) days of notice served by either party to reopen an existing variable shift schedule agreement or negotiate 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:

(a) the number of scheduled employees required for each hour,

And

(b) 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 level shall be concluded within five (5) weeks from the time of the first meeting identified in paragraph 2.1 above.

**2.4** Should the parties come to an agreement on a proposed VSSA schedule at the local level, the union shall submit the schedule for ratification by the employees.

**2.5** Should the discussions at the local level not result in an agreement on a proposed VSSA schedule, the parties will immediately refer the outstanding issues to representatives from the Union and regional representatives from the Employer for further consultation.

**2.6** Representatives identified under 2.5 above shall conclude their consultation within a maximum of three (3) weeks from the date the outstanding issues have been referred to their attention by the local committee.

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**2.7** Joint recommendations of the representatives identified under 2.5 above on the outstanding issues, or a proposed VSSA schedule shall be sent back to the local level for consideration for a maximum of one (1) week period.

**2.8** Should the parties come to an agreement on a proposed VSSA schedule at the local level, the union shall submit the schedule for ratification by the employees. Otherwise, the union will submit the last Employer VSSA proposal to a vote.

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**2.9** Unless otherwise mutually agreed upon, the ratification vote identified in paragraphs 2.4 or 2.8 and provision of the results to the Employer shall be completed within two (2) weeks.

**2.10** Where proposed VSSA is rejected, by mutual agreement, the current VSSA may be extended. Should either party not elect to extend the current VSSA, shift schedule consistent with clause 25.13 will take effect. For employees not already covered by an existing VSSA, the current scheduling arrangement will remain in force.

**2.11** In the event that the proposed VSSA is accepted by a ratification vote, the new schedule will be posted in accordance with clause 25.16 of the agreement.

**2.12** Except as provided in paragraph 2.10 above, both parties may terminate a VSSA by sending the other a thirty (30) day notice of termination of the existing VSSA unless discussions are on-going pursuant to this appendix.

**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.

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*[7]*.*

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

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

in the interests of both parties, and is an extension of the commitment contained in Article 1 of the collective agreement.

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 two 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 all of this. First, the employer is proposing to create a mechanism where VSSA talks and voting will 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 notion that the employer would be involved in conducting the vote of an offer to Union members in unheard of in the unionized world. Lastly, 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 some 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 approximately 90 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.

*APPENDIX D*

**EMPLOYER PROPOSAL:**

**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**

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This memorandum is to give effect to the understanding reached between the Employer and the Public Service Alliance of Canada in respect of the implementation period of the collective agreement.

The provisions of this Collective Agreement shall be implemented by the parties within a period of ~~one hundred and fifty (150)~~ **two hundred and seventy (270)** days from the date of signing.

**RATIONALE:**

The Public Service Labour Relations Act provides for a ninety-day window for a collective agreement to be implemented. In good faith, the Union in the first round agreed to a longer implementation period. The employer in this round is proposing a whopping two hundred and seventy-day period to implement, which to the best of the Union's knowledge is unheard of. Given the amount of time this round of bargaining has taken, and given what is provided for under the law, the Union submits the employer's proposal is unreasonable – if not outrageous. The Union therefore respectfully requests that the employer's proposal not be included in the Commission's recommendation.

***APPENDICIES F AND G***
***ARMING INITIATIVE***

**PSAC PROPOSAL:**

**APPENDIX F-G-G1**

**APPENDIX F – G – G1**
**ARMING - CDT**

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**Replace Appendix F and G-1 with the following:**

**ARTICLE xx**
**FIREARM TRAINING PARTICIPANT SELECTION**

xx.01 Employees required to undergo firearm training and/or certification, as well as Control Defence Tactics training and/or certification, shall be given every reasonable opportunity to achieve certification or re-certification.

xx.02 If an employee fails to meet the criteria for training, certification or recertification outlined above, the Employer shall make every reasonable effort to find the employee a placement opportunity within the Public Service. Such employees shall be salary protected consistent with Part 5 of Appendix C of this agreement.

xx.03 The parties agree to maintain a joint consultation committee to discuss the strategy for the placement of employees who are unsuccessful on the firearm and control defence tactics training, certification and re-certification.

**EMPLOYER PROPOSAL:**

Remove both appendices.

**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 57) 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 two 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.

As of March 2016, 6492 officers had received firearm training, with another 2000 having undergone recertification at four training campuses. At this juncture the initial roll-out of the firearm initiative is largely complete, and as the numbers suggest, officers undergoing recertification – both firearm and control defence tactics - is now where much of the training lies.

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.

***APPENDIX XX***
***ALTERNATE WORKING 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 Telework Policy. The policy states 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." (Exhibit 58) It also states 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".

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 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 2006 CBSA began unilaterally revoking the Telework Policy in certain regions. It began in Toronto, and by 2008 had spread to Quebec and Alberta. At the time of writing, there are 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 previous 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 in person five times over the course of 2009 and 2010. 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, nothing has changed since management ended the practice in 2008.

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 59)*

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 refers 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 recognized the benefits of telework for employees, employers and communities. This is reflected in the Treasury Board Telework Policy, and reinforced by the aforementioned study put out by Transport Canada in the summer of 2010. Yet CBSA has unilaterally revoked all telework in its Trade Compliance Division for much of the country.

When the joint committee met to discuss both the Employer's policy and employee frustration, the reason given by management representatives for having ended telework was that there were increased costs and security concerns associated it.

With respect to cost, the government's own study has shown that, with proper planning and coordination, telework *reduces* costs – an objective often touted by the current government. Indeed the Transport Canada study shows that this has proven to be the case in at least one high-profile private sector example.

With respect to security concerns, in meetings of the Telework Committee management representatives readily admitted that “casual and episodic telework requests have been supported on a case-by-case basis in the region”, and that it is practiced for employees requiring accommodation. Thus, based on the Employer’s comments in meetings in the joint committee, telework is clearly feasible in the context of Trade Compliance and for certain other members of the bargaining unit as it is still happening. What’s more, in the case of the Trade Compliance division, employees are regularly off site performing verifications as part of their duties. In short, they are already out of the office anyway as performing work off site is part of their job. Lastly, a representative from the CBSA Security Directorate indicated in a meeting of the Telework Committee that, provided that appropriate protocols were in place such as secure briefcases for Trade Compliance staff, telework poses no security risks and is cost neutral. (Exhibit 69) Indeed, not a single incident with respect to security breach in the context of telework has been raised by the Employer in negotiations, nor were any raised when the parties met in the Telework Committee. Thus the Employer has provided no cogent reason as to why it has revoked telework other than on a ‘case by case’ basis. Indeed, the Union submits that if it can be granted on a case by case basis, it can be made available in a fair, transparent and uniform manner.

Telework was widely practiced and encouraged for non-uniformed staff many years at CCRA and later CBSA. From 2006 through 2008 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 in 2006. 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.

The Union recognizes that there are situations where telework is not feasible. It is for this reason that its proposal states "where operationally feasible". However where it is operationally feasible (and as has been demonstrated here it is operationally feasible in a number of non-uniformed workplaces within CBSA), the Union submits that it can and should be made available to employees. Thus the Union respectfully requests that its proposal concerning telework be included in the Commission's 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, Article 20 Harassment and Abuse of Authority and Article 56 Employee Performance Review. 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.

As both the 2014 and 2017 Public Service Surveys clearly demonstrate, 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 60)

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.

***APPENDIX XX***
***MEDICAL APPOINTMENTS***

**PSAC PROPOSAL:**

**NEW ARTICLE**
**MEDICAL APPOINTMENTS**

**Medical or Dental Appointments**

**xx. Employees shall make every reasonable effort to schedule medical or dental appointments on their own time. However, in the event that medical or dental appointments cannot be scheduled outside of working hours, employees shall be granted leave with pay to attend medical or dental appointments.**

**Medical Certificate**

**xx. 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. 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 61)*

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 62) 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 35.05 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 the PSAC Postal Service Group collective agreements with the House of Commons, stemming from a 2010 PSLRB arbitral award (485-HC-45). The same language can also be found in the CEP Technical Group collective agreement with the House of Commons. The reimbursement of medical certificate is also a frequent practice in the law enforcement community (Exhibit 64).

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 enforcement workers in its employ, 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.

The Union's proposals for Article 52 are designed to ensure consistency in terms of the application of certain practices across the bargaining unit.

At present the Employer's policy is that employees are provided 3.5 hours paid leave for medical and dental appointments that are initial and diagnostic in nature. However, for follow up appointments employees are required to use their sick leave. In addition, employees are not granted the 3.5 hours of time if the appointment requires an absence of more than 3.5 hours (Exhibit 65)

There are a number of factors that are specific to the FB bargaining unit that render the application of this policy problematic. First, there are many employees in the bargaining unit that work in remote, rural locations where attending medical or dental appointments require an absence of more than 3.5 hours. Second, because of the fact CBSA workplaces can be found in every province, territory and in virtually every geographical setting conceivable, the size and diversity of CBSA operational settings has led to an inconsistent application of the policy.

An example of these two problems arose recently in Saskatchewan, where employees stationed on the US border in the westernmost corner of the province were denied the leave as it required a full day's travel to Regina, and where it was discovered that some employees were being granted the leave in one corner of the province while some were

not in another part of the province. (Exhibit 66) The fact that a significant majority of the employees in the bargaining unit work shifts can also render the scheduling and attending of such appointments difficult. Lastly, the policy does not cover appointments that are recurring in nature, such as appointments required for on-going treatment or therapy.

The Union's proposal would address all of these problems. It would ensure consistency in terms of application. It would ensure that the practice is respected and maintained. It would ensure that employees living and working in remote areas are not disadvantaged in comparison with those that work in more populated areas where more services are available and close at hand. And it would ensure that employees that must undergo on-going treatment or therapy are not penalized. Lastly, the Union has acted in good faith by including language in its proposal that requires that employees make every reasonable effort to schedule medical and dental appointments outside of their working hours. Thus the only time employees would have access to this leave is when they effectively have no alternative.

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

***APPENDIX XX***
***STUDENT EMPLOYMENT***

**PSAC PROPOSAL:**

**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 67)

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 68)

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 report issued by CBSA earlier this year, the agency in 2013-2014 hired 1142 students; in 2014-2015: 1215 students; in 2015-2016: 1341 students; in 2016-2017: 1328 students; forecasted for 2017-2018: 1344 students. In short, since 2013 there has been a 15% increase in the hiring of students. The first two years of these increases took place at the same time that the agency was implementing the Deficit Reduction Action Plan (DRAP) initiative. As of June 2017 there are just over 8,000 employees in the FB bargaining unit. This means that, based on the agency's numbers, in 2017 there is effectively one student at CBSA for every 6.5 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.

***APPENDIX XX***
***LEGAL INDEMNIFICATION***

**PSAC PROPOSAL:**

**APPENDIX xx**
**LEGAL INDEMNIFICATION**

**The September 1, 2008 Treasury Board Policy on Legal Assistance and Indemnification shall form part of this Agreement, with the following modifications:**

3.1 Providing legal assistance and indemnification to employees is essential to the protection of the Crown's interest, the fair treatment of its employees, and the effective management of an organization. employees may be subject to legal claims/actions despite the fact that they are acting in good faith, within the scope of their duties or in the course of their employment. It is therefore necessary that they receive appropriate legal representation and be protected from personal liability as long as they are acting in good faith within the scope of their duties or in the course of their employment .

**4.1 Remove definition of "Crown Servants". All references to Crown Servants in the Policy shall be replaced with "employee". Legal assistance (*services juridiques*)**
includes the cost of the services of the Department of Justice Canada, a Crown agent or private counsel, as well as paralegal services and includes necessary travel costs, incidental costs and the use of expert witnesses.

5.1 The objectives of this policy are to:

- protect employees from personal financial losses or expenses incurred while they were acting within the scope of their duties or in the course of their employment;
- protect the Crown's interest and its potential or actual liability arising from the acts, errors or omissions of its employees; and
- ensure continued and effective public service to Canadians.

5.2 Expected results

The expected results of this policy are that:

- Employees' and the Crowns interests are protected from potential or actual liability personal or otherwise arising from the acts, errors or omissions of employees occurring while they were acting within the scope of their duties or in the course of their employment;
- Employees are protected against personal liability;
- the Crown and employees are appropriately and promptly represented; and
- parliamentary proceedings, commissions of inquiry and inquests have the full collaboration of employees.

**6.1.1 Decision making**: **There shall be no monetary limit on legal assistance and indemnification.**

Decisions in respect to a request for legal assistance or indemnification are the responsibility of the approval authority for the organization where the incident giving rise to the request first arose.

**6.1.3 Eligibility**:

In making a decision on whether to approve a request for legal assistance or indemnification, ensuring that the employees meets:

- the two basic eligibility criteria as described in 6.1.5; or
- the exceptional circumstances as described in 6.1.8; or
- the two qualifying criteria pertaining to parliamentary proceedings, commissions of inquiry, inquests or other similar proceedings as described in 6.1.9; and
- the requirements set out in Appendix B.

The approval authority may seek the advice of any officials who may have knowledge of the facts, as well as the legal advice of the Department of Justice Canada prior to making this decision. The decision should be made before legal counsel engages with the employees to avoid a potential conflict situation, which would be detrimental to the interests of both the employees and the Crown.

**6.1.5 Two basic eligibility criteria**:

In considering employees for legal assistance or indemnification, determining whether the employee:

- acted in good faith;
- acted within the scope of their duties or employment with respect to the acts, errors or omissions giving rise to the request.

**6.1.6 Legal assistance**:

Deciding whether to approve legal assistance requests of employees who meet the two basic eligibility criteria in the following situations:

- when they are sued or threatened with a suit;
- when they are charged or likely to be charged with an offence;
- when they are named in a legal action or under threat of being named in a legal action; or
- when they are faced with serious personal liability before any court, tribunal or other judicial body; or
- when they are obliged to testify in quasi-judicial or judicial proceedings.

**6.1.7 Indemnification**:

Providing indemnification when the employee meets the two basic eligibility criteria as described in 6.1.5.

**6.1.8 Exceptional circumstances**:

Deciding whether to provide legal assistance or indemnification in the situations enumerated in 6.1.6 where the employee does not meet one or more of the two basic eligibility criteria as set out in 6.1.5, provided the approval authority considers that it would be in the public interest to approve the request, after having consulted the Advisory Committee on Legal Assistance and Indemnification.

If an employee grieves the Employer’s decision not to provide him or her will legal assistance, he or she will be entitled to legal assistance during the grievance process, up to and including arbitration. If the grievance is denied at adjudication or if the grievance is withdrawn, the Employer shall recover any overpayment from the employee's pay, but such recovery shall not exceed ten percent (10%) of the

employee's pay in each pay period, until the entire amount is recovered. Notwithstanding the foregoing, in the event that employment ceases, any overpayment still outstanding may be recovered in full from the final pay.

**6.1.11 Ineligible requests**:

Ensuring legal assistance or indemnification requests are not approved for the following matters:

- matters arising while the requestor was engaged under a contract for services, with the exception of ministers' exempt staff;
- an action or claim initiated by a employee unless it forms part of a defence to a legal claim, action or charge for which legal assistance was approved under this policy;
- an internal investigation or an internal administrative recourse mechanism including grievances, staffing or disciplinary proceedings; and
- activities undertaken/carried out by a volunteer.

**6.1.12 Termination and recovery of legal assistance**:

If at any time during or after the proceedings it becomes clear that the employee did not meet the basic eligibility criteria outlined in section 6.1.5 or did not continue to qualify under the exceptional circumstances described in section 6.1.8, a written notice of termination of legal assistance shall be issued to the employee, after which 30 more days of legal indemnification will be provided.

Where legal assistance was approved for a employee who met the criteria under 6.1.5, but it was subsequently established that he or she did not act in good faith or without instruction from the Employer, ensure that recovery action is considered and initiated for an amount equal to the legal assistance provided or the indemnification paid, and this amount shall constitute a debt owing to the Crown.

**6.1.14 Responsibility for payment**: Ensuring that:

- any amounts paid pursuant to this policy are paid from the budget of the organization in which the person worked at the time the act or error or omission giving rise to the request first occurred. If the approval authority is from a different organization, then ensuring that the amount is referred over to such organization for payment. If that organization no longer exists, the successor to that organization is to handle the request and bear the financial costs. If no successor organization exists, then an application to the Clerk of the Privy Council may be made to determine from which budget the amounts are to be paid;
- for cases involving offences, payment by the Crown does not include any fines or costs of prosecution; and
- payment is not made until the request and supporting information is provided, and the approval authority has issued an authorization in writing approving the request.

**6.1.16 Private counsel**:

In cases where there is a conflict of interest or a probable conflict of interest between the Crown and the employee, or when the employee is charged with an offence, deciding whether to authorize payments for private legal assistance after consulting the Department of Justice Canada with respect to the appropriateness of engaging such private counsel. Such consultation shall include the name of the proposed private counsel as well as the private counsel's proposed fee schedule. If it is determined that this source of assistance is appropriate and private legal assistance is authorized, then the approval authority shall provide written authorization to the employee including the selection of private counsel or a probable conflict of interest, and the approved fee schedules, and of the requirement for reviewing accounts by the Department of Justice Canada.

**8.2 The Department of Justice Canada is responsible for:**

- providing legal advice to approval authorities and their organizations;

- providing litigation services to the Crown and to the employees approved for assistance under this policy, including the conduct of the litigation, either through a Department of Justice counsel or an external counsel retained as an agent of the Attorney General, with the Minister of Justice having responsibility in consultation with the employee who requires legal assistance, for selecting and instructing the agent;
- ensuring, in cases where two or more employees are sued in the same action, that the same counsel is to conduct the employee' defence in the absence of a conflict of interest;
- treating, to the greatest extent possible and consistent with counsel's obligations to protect the interest of the Crown, all communications with the employee in confidence in any claim or proceeding for which the Attorney General of Canada has the authority under this policy to select and instruct counsel. The Crown will not use any information so disclosed in confidence by the employee in any disciplinary or civil action against the employee;
- when at any time during a proceeding a conflict arises for a Department of Justice counsel or an agent of the Attorney General representing the employee, the Attorney General could instruct such counsel to discontinue so acting. In such situations, the approval authority shall authorize the engagement of private legal assistance in accordance with the collective agreement;
- reviewing fees and disbursements proposed to be charged by private counsel and
- making recommendations in regard to a monetary settlement of a claim or an action made or brought against a employee.

**Appendix A – Remove. Appendix B - Requests by Employees**

**Process**

In order to be considered for legal assistance and indemnification, an employee is required to:

1. inform the appropriate official (normally the employee's manager or supervisor) of the matter at the earliest reasonable opportunity after the employee becomes aware of a possible or actual suit, action or charge as a result of any alleged act or omission within the scope of the employee's duties or within their course of employment, so that the official has the opportunity to assist or guide the employee;

2. submit a request to the approval authority in the organization in which the act or omission giving rise to the request first arose. The request should include how he or she meets the applicable criteria and should specify if the request is for legal assistance, indemnification or both. If the employee's request exceeds deputy heads' approval limits listed in Appendix A and requires authority of the Minister or the Treasury Board, the request is to nonetheless first be made to the employee's own deputy head (as applicable);

3. where requesting to be represented by private counsel, state the reasons for such request and provide the name and proposed fee schedule of the preferred counsel;

4. make a factual report to organizational management of the incident leading to the request for legal assistance or indemnification; and

5. upon request by the requester's organization, authorize the Attorney General, or such other person as may be designated by the Attorney General, to defend his or her action, claim or charge using the required authorization form set out at the end of this appendix.

Failure of an employee to meet the above requirements may result in denial of legal assistance and indemnification and result in personal liability. An acquittal in offence cases, or dismissal of a civil suit, does not automatically entitle the employee to reimbursement of expenses that have been previously denied.

For each subsequent stage of the judicial process, including appeals, or for any significant change in the circumstances related to the case, a new request for payment of legal assistance and indemnification is to be made and assessed in accordance with the considerations set out in this policy.

At the end of each stage of the judicial or quasi-judicial process, employees will be reminded of this requirement.

**Authorization Forms**

I, **(name), of the (city/town/township)**, of **(name of city)** in the ***(province/territory)*** of ***(name of province/territory)*** hereby authorize the Attorney General of Canada, or such other person as may be designated by the Attorney General, or a delegate thereof, to defend me in,

**(*describe the nature of the action and the name of the court, tribunal, inquiry or other*)**

and to take such actions and conduct such proceedings as the Attorney General may consider necessary to defend such action on my behalf and to protect the interests of the Crown.

I have been provided with a copy of the Treasury Board *Policy on Legal Assistance and Indemnification*. I have read and understood the policy. If at any time during or after the proceedings it becomes apparent that I did not act in accordance with the eligibility criteria outlined in the policy, the approval authority may terminate legal assistance in accordance with the collective agreement.

Should any judgment or decision result in an award of costs to me, I hereby authorize and direct the payment of any such amounts directly to the Crown in accordance with the collective agreement.

DATED at **(*location*)**, this **(*date*)** day of **(*month*)**, A.D., **(*year*)**.

**To be added to the above if there are multiple defendants**

I have been informed, and I understand, that I have the right to terminate this retainer at any time and to retain and instruct private counsel. I have further been informed, and I understand, that should a conflict arise between my interests and those of the Crown (or any of the co-defendant(s) named above) at any time during this litigation, it will be necessary for me to retain private counsel. I am aware, in that event, that I may apply for approval to retain private counsel at public expense in accordance with the collective agreement.

**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, Article 20 Harassment and Abuse of Authority and Article 56 Employee Performance Review. Again, achieving new protections for employees is a critical issue for the Union in this round of negotiations.

With respect to the Legal Indemnification Policy, the Union is proposing the include the current Treasury Board policy in the collective agreement, with certain modifications.(Exhibit 71)

The rationale behind the Union's proposing to include the Policy in the collective agreement is straightforward: The Union does not want the protections provided under the policy to be subject to change without the Union's consent. Also the Union wants to ensure that violations of the policy or disagreements with respect to interpretation of the policy are subject to the dispute resolution mechanisms and employee/Union recourse provided for under the parties' collective agreement.

There is clear precedent for this. Article 7.04 of the current collective agreement provides a list of no less than fifteen directives and policies that form part of the collective agreement. The Union submits that a policy of such critical importance to workers in this bargaining unit as the Legal Indemnification Policy should not reside outside the collective agreement, as it is the policy that affords these employees protection and legal representation should a member of the public attempt to pursue an employee legally for occurrences that transpire over the course of a member of the bargaining unit performing his or her duties.

In addition to including the policy in the collective agreement, the Union is proposing some modifications. For instance, replacing "crown servants" with "employees" as the collective agreement applies to "employees". Also the Union has proposed to remove some ambiguities from the policy in terms of when representation is to be provided and who is to absorb the costs.

Of critical importance, the Union's proposal maintains two of the three basic criteria concerning the circumstances under which an employee has access to legal representation - namely 1) that the employee acted in good faith, and 2) that the employee acted within the scope of their duties or course of employment with respect to the acts or omissions giving rise to the request.

However the Union's proposal eliminates the third criterion under the current policy, that an employee must not have acted "against the interests of the Crown". The Union proposes this modification as it is not clear who would make such a determination. The language in the policy concerning whether or not an employee is acting in the "interests of the crown" is too subjective and opens the door to suggestion that it is the employer who will make the determination as to whether or not an employee has or has not acted in the Crown's interests. The Union submits that the determination as to whether or not an employee is to have legal representation under the policy should not be subject to such ambiguity. If an employee has acted in good faith, and has acted within the scope of their duties or course of employment, the employee will then be provided with representation. There is no need for the third criterion in the opinion of the Union if the other two criteria are met.

Most of the employees working in the FB bargaining unit work in a front-line, law enforcement capacity. The interact with thousands of people on a daily basis, often in difficult situations. The potential for an employee in this group to potentially need legal representation over the course of his or her career is not insignificant. Consequently the protections provided under the Legal Indemnification Policy should not be subject to ambiguity or employer discretion, nor should they reside outside of the parties' collective agreement. The Union's proposals address both of these issues, and therefore the Union respectfully requests that its proposals concerning legal indemnification be included in the Commission's recommendation.

***APPENDIX "A"***
***RATES OF PAY***

**PSAC PROPOSAL:**

1) Market adjustment

The Union proposes a market adjustment of 10% (effective June 21, 2014, prior to applying an economic increase) to the FB salary grid.

2) General Economic Increases

Increase all rates of pay in Appendix A as follows:

- Effective June 21, 2014, after market adjustments: 2.75%
- Effective June 21, 2015: 2.75%.
- Effective June 21, 2016: 2.75%.

3) New Recruits

Upon completion of new recruit training at Rigaud College, employees will be placed at the appropriate step on the FB 03 scale once assigned to a CBSA port or office.

4) Appendices J and K Integrated Border Services Allowance

**For Non-Uniformed Officers and Uniformed officers :**

**Effective June 21, 2014** – increase Integrated Border Services Allowance to $2500

**For Non-Uniformed and Uniformed officers :**

**Effective June 21, 2014** – 100% of the Integrated Border Services Allowance is integrated in base pay before the application of the economic increases and market adjustment.

**Effective June 21, 2014** – deletion of Appendices J and K

5) Long Service Pay (New)

**X.01 An employee who receives pay for at least seventy-five (75) hours for each of twelve (12) consecutive calendar months for which the employee is eligible to receive long service pay, beginning October 1 of each year, is entitled to be paid, in a lump sum, an amount related to the employee's period of service in the Public Service set out in the following table:**

| Period Of Service in the Public Service | | | Annual Amount |
|---|---|---|---|
| 5 | to | 9 years | $740 |
| 10 | to | 14 years | 850 |
| 15 | to | 19 years | 980 |
| 20 | to | 24 years | 1110 |
| 25 | to | 29 years | 1240 |
| 30 years or more | | | 1370 |

**X.02 An employee who does not receive at least seventy-five (75) hours' pay for each of twelve (12) consecutive calendar months for which the employee is eligible to receive long service pay, beginning October 1 of each year, is entitled to one-twelfth (1/12) of the relevant amount as set out in clause X.01 for each month for which he/she receives at least seventy-five (75) hours' pay.**

**X.03 Where an employee does not complete the employee's specified period of service in the Public Service upon the first (1st) day of a calendar month, the employee shall, for the purpose of clause X.01, be deemed to have completed the specified period of employment:**

**(a) on the first (1st) day of the current month if the employee completes the specified period of employment during the first fifteen (15) days of the month,**

**and**

**(b) on the first (1st) day of the subsequent month in any other case.**

6) Duration of agreement

The Union proposes that the new collective agreement expire on June 20, 2017.

**EMPLOYER PROPOSAL:**

The Employer proposes that the Appendix A be renewed without changes.

The Employer proposes the following annual economic increases:

- Effective June 21, 2014, 1.25% salary increase
- Effective June 21, 2015: 1.25% salary increase

- Effective June 21, 2016: 1.25% salary increase
- Effective June 21, 2017: 1.25% salary increase

**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 as constituted prior to the changes made in 2013:

> ***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.

(Exhibit A)

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 woefully inadequate in light of 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 employee. The recognition of the distinction between the work performed by the vast majority of 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 for 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. That being said there can be no doubt that employees in the FB bargaining unit today perform duties that are analogous with those performed by these workers. 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 a majority 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 portion of them are carrying firearms (Exhibit B).

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

In order 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 Integrated Border Service Allowance and the proposal for the introduction of a Long Service Pay appendix reflects this reality.

These disparities in pay, pension and allowances serves 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 the foundational arguments upon which the employer's pay proposal is based.

**Employer 'Rationale': (In)ability to Pay**

Not Surprisingly the arguments presented during negotiation to support the substandard employer proposal and to counter the Union demands all revolved around the notion of the employer's (in)ability to pay.

The employer's framing of the current economic climate, the state of Canadian economy and the fiscal situation of the Government of Canada is conveniently designed to suggest there is a need for budgetary constraint and meager general economic increases.

This sub section will discuss how those employer arguments 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. It will also reflect on the actual state of the Canadian economy as described by expert organizations that run counter to the employer's pay proposal.

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 as a result 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 C)*

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 make 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 the overwhelming majority of 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"[8].*

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."[9]*

Therefore, the Union submits that the state of the Canadian economy and the government of Canada's fiscal circumstances should be given limited weight, particularly when the government has it within its power to determine its own ability to pay by setting its budget, and especially when the state of the Canadian economy and the government's fiscal circumstances are relatively solid in comparison to other industrialized economies.

**Canadian Economy: *"Position of Fiscal Strength"*[10]**

Employer's (in)ability to pay argument contradicts Budget 2016's and 2017's assurances to Canadians that Canada is in a "Position of Fiscal Strength":

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[8] Jeffrey Sack, Q.C., "Ability to pay in the Public Sector: A Critical Appraisal", *Labour Arbitration Yearbook*, 1991, vol. 2, 277 to 279..

[9] *University of Toronto Faculty Association v. University of Toronto*, Interest Arbitration, Ontario, Martin Teplitsly, Sole Arbitrator October 5, 2010. (Exhibit D).

[10] Government of Canada (2016) "Economic and Fiscal Overview-The Path Forward".
Accessed from: http://www.budget.gc.ca/2016/docs/plan/overview-apercu-en.html#_Toc446106624

This section will outline the most recent economic forecasts and positions taken by the Conference Board of Canada, the IMF, the OECD and Canada's largest banks. Before outlining the positions of the above mentioned organizations, it is important to note that according to Budget 2016, Canada is in a "position of fiscal strength" with an "economy that shows signs of resilience". (Exhibit E) These statements contradict the employer's position that financial constraint is necessary. Indeed, Budget 2016 celebrates how Canada has some of the strongest indicators of financial stability in the G7 and re-assures Canadians that there are positive economic developments outside of the energy sector. In order to justify that Canada is in a position of strength to take on new investments, Budget 2016 explains how Canada's net debt-to-GDP ratio is the lowest in the G7. Budget 2016 outlines how Canada has a "low debt burden, with public debt charges as a percentage of budgetary revenues at near-historic lows, and with interest rates at historic lows". This section will outline how amidst statements of optimism and projections of economic growth, the union's proposed rates of pay are reasonable and necessary given current trends and projections.

*Economic Forecasts and Analysis: The Canadian economy got off to a great start in 2017*

The Conference Board of Canada's *Canadian Outlook 2017: Summer 2017* [11]

(Exhibit F) *projected the Canadian economy to see solid growth this year:*

> *"The Canadian economy has shifted into high gear. In the first quarter of 2017, economic growth came in at an incredible 3.7 per cent (annualized). Monthly GDP data suggest that the momentum continued into the second quarter. Economic strength is also being reflected in strong job creation, with 316,000 new jobs being created in the last 12 months, most of them full-time positions. Given the solid start to the year, we expect the economy to grow by 2.6 per cent this year, or 0.3 percentage points higher than we projected in our spring Economic Outlook."*
>
> *The strong economic growth so far this year benefited the government financial position. With this recent strong nominal GDP growth, the Conference Board now expect higher revenues and smaller deficits at the federal levels: "The federal deficit for fiscal 2017–18 (excluding the contingency) is now projected to be $24.4 billion, or about $1 billion less than Budget 2017's estimate. By 2020–21, the*

[11] Conference Board of Canada. Canadian Outlook: Summer 2017

*federal deficit should shrink to $13.6 billion—a $5.1-billion improvement over the budget projection."*

The OECD's most recent analysis, from June 2017, is similar to the conference board statements about the state of the Canadian economy. (Exhibit G) The OECD' economic forecast explains how Canadian economic growth is projected to increase in 2017:

> *"Economic growth is projected to increase in 2017, driven by expansionary fiscal policy, household wealth gains and a resumption in business investment, in particular in the resource sector following the rebound in commodity prices. In 2018, growth is likely to ease but remain robust, as government spending increases taper off." (Exhibit H)*

The IMF most recent statement also speaks to the recent rebound of the Canadian economy:

> *"The recovery is expected to gain momentum in the near term, supported by a fast-growing U.S. economy, expansionary fiscal and monetary policies, and stable oil prices. GDP growth is projected to rise to 2.5 percent in 2017 and 1.9 percent in 2018, allowing the negative output gap of 1 percent of GDP to close in the first half of 2018."*

**GDP Growth (percent) – Actual & Projected**

| GDP | 2015 | 2016 | 2017 F | 2018 F |
|---|---|---|---|---|
| **Banque Scotia**[12] | 0.90% | 1.50% | 2.90% | 1.90% |
| **Banque Nationale**[13] | 0.90% | 1.50% | 2.40% | 2.00% |
| **Desjardins**[14] | 0.90% | 1.50% | 2.90% | 2.10% |
| **BMO**[15] | 0.90% | 1.50% | 3.00% | 2.00% |
| **CIBC**[16] | 0.90% | 1.50% | 2.90% | 2.10% |
| **Banque Royale**[17] | 0.90% | 1.50% | 2.60% | 2.10% |
| **TD**[18] | 0.90% | 1.50% | 2.80% | 1.90% |
| **Average** | **0.90%** | **1.50%** | **2.79%** | **2.01%** |

[12] Scotia Bank - Global Economics (2 Août, 2017). "Global Economics: Latest Forecast Tables". Consulté au : http://www.gbm.scotiabank.com/scpt/gbm/scotiaeconomics63/forecast.pdf

[13] Banque Nationale - Analyse économique (Août, 2017). " Le mensuel économique : Économie et stratégie". Consulté sur : https://www.bnc.ca/content/dam/bnc/fr/taux-et-analyses/analyse-economique/mensuel-economique.pdf

[14] Desjardins - Études économiques (24 Août, 2017). "Prévision économique et financières". Consulté au : https://www.desjardins.com/ressources/pdf/pefm1708-f.pdf?resVer=1503581655000

[15] BMO Marchés des capitaux (25 Août, 2017). "Provincial Economic Outlook" Consulté au : https://economics.bmocapitalmarkets.com/economics/forecast/prov/ProvincialOutlook.pdf

[16] CIBC Capital Markets (15 Août, 2017). "Economic Update". Consulté au : https://economics.cibccm.com/economicsweb/cds?ID=3561&TYPE=EC_PDF

[17] Recherche économique RBC (Juin, 2017). "Perspective provinciales". Consulté au : http://www.rbc.com/economie/economic-reports/pdf/provincial-forecasts/provtbl_fr.pdf

[18] Services économiques TD (22 Juin, 2017). "Perspectives économiques provinciales". Consulté au: https://www.td.com/francais/document/PDF/economics/qef/ProvincialEconomicForecast_Jun2017_fr.pdf

As the above table illustrates, the consensus points towards Canadian economic stability and constant growth for the coming years. GDP forecasts by all major financial institutions show a clear consensus that the economy will be performing at a strong and solid pace in 2017.

Therefore, in light of arbitral jurisprudence concerning "ability to pay arguments", and the fact that the government's fiscal circumstances and the Canadian economy are relatively strong, the Union submits that “ability to pay arguments” should be given little - if any - weight by the Board. In addition, with household spending projected as a primary driver of economic growth, increases in wages are actually a key element in Canada’s long-term prosperity. The employer’s wage proposal is not only inadequate but could serve to hurt the Canadian economy, projected to require increased household spending for growth.

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

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 the vast majority of 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 some extent Correction Officers at CSC. In the broader public services, 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.*[19]

This principle is reinforced by Section 175 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 those of employees in similar occupations in the private and public sectors.*

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".*[20]

The Union submits that the discrepancy in wages 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 previously noted, a paid meal period is the norm in this 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

[19] Kenneth Swan, The Search for Meaningful Criteria in Interest Arbitration, (Kingston: Queens University Industrial Relations Centre, 1978) (Exhibit I)
[20] Arbitrator Stan Lanyon, Q.C.inVancouver Police Board v. Vancouver Police Union,1997B.C.C.A.A.A.No.621.

lags significantly behind other major law enforcement organizations in Canada. Wages are no different in this regard, in that FB employees are light years behind appropriate comparators when it comes to base salary comparison.

Up-to-date details about 1st Class Constable Salaries across Canada are produced on a regular basis by the RCMP Pay Council. The Union's analysis employs the June 2015 Police Compensation Tables and The RCMP Total Compensation Report of December 2012 (Exhibit J).

The following table represents the annual salaries of First Class Constable effective in Fiscal 2014-2015. All major Canadian police organizations are listed. Organizations from every province are also listed in the table. In terms of base annual salary, and using the FB 3 level as the key benchmark, employees in the FB group are $16,914 behind the national average salary.

**Canadian 1st Class Constable Salaries Comparison - Fiscal 2014-2015**

| Province | Jurisdiction* | Nb. officers 2014 | 1st class Cst Salary Effective in Fiscal 2014-2015 |
|---|---|---|---|
| National | RCMP | 17925 | $ 82,108 |
| NFLD | Royal NFLD Constabulary | 396 | $ 81,488 |
| NS | Halifax | 509 | $ 88,454 |
| PEI | Charlottetown | 62 | $ 80,253 |
| NB | St-John | 157 | $ 85,519 |
| QC | Montréal | 4623 | $ 77,050 |
| QC | Sûreté du Québec | 5694 | $ 70,269 |
| ON | York Reg. | 1510 | $ 93,022 |
| ON | Toronto | 5342 | $ 92,433 |
| ON | OPP | 6116 | $ 90,621 |
| ON | Peel Reg. | 1922 | $ 90,355 |
| ON | Ottawa | 1301 | $ 90,245 |
| MB | Winnipeg | 1474 | $ 93,033 |
| Sask | Saskatoon | 449 | $ 89,931 |
| AB | Calgary | 2090 | $ 91,391 |
| AB | Edmonton | 1655 | $ 91,245 |
| BC | Vancouver | 1383 | $ 92,160 |

| Province | Jurisdiction* | Nb. officers 2014 | 1st class Cst Salary Effective in Fiscal 2014-2015 |
|---|---|---|---|
| | | **Average:** | **$ 87,034** |
| | | **Border Service Officer:** | **$ 70,120** |

1. All police department with more than 1000 officers are listed in this survey.
2. The largest police departments in each province are listed in this survey.
3. Data from the June 2015 police compensation table produced by the RCMP Pay Council.

The Union submits that its wage proposal is entirely reasonable given the current discrepancy between the annual salary of Border Service Officers and its comparators. Despite the fact that a strong argument could be made for a market adjustment that would effectively close the average gap found in the previous table, the Union has opted for less coslty proposal that would effectively close the compensation gap between FB's and their closest comparator in the federal public sector the RCMP.

The CBSA is the second largest armed law enforcement organization in Canada after the RCMP. Like the RCMP, CBSA is a nation-wide organization with members working from coast to coast to coast. Like the RCMP, FB bargaining unit members 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 conducting of investigations work and intelligence analysis; 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. While accomplishing all those duties, FB group members have to collaborate with other law enforcement, intelligence and security agencies in joint operations. The RCMP and the CBSA work together to support their public safety mandate.

The 10% market adjustment proposed by the Union is based on the difference between the FB-03 hourly salary and the RCMP First Class Constable hourly salary for fiscal year 2013-2014.

It is appropriate the use the FB-03 level for the comparison as nearly 65% of the bargaining unit's members are classified as FB-03. The vast majority of what could be describe as frontline, uniformed, and armed officers are classified as FB-03. Border Services Officers, the largest group of members in the FB bargaining units are classified FB-03.

The following clearly outlines the 10% difference that currently exist between FB-03 salary and 1st Class Constable salary at RCMP on an hourly basis.

| | **2013-2014** |
|---|---|
| **RCMP 1st Class Constable** | $ 82,108 |
| **FB3** | $ 70,120 |
| | |
| | **2013-2014** |
| **RCMP (hourly based on 40hrs per week)** | $ 39.32 |
| **FB3 (hourly based on 37.5hrs per week)** | $ 35.85 |
| **Difference:** | 10% |

This comparison doesn't take into consideration the recent wage increases announced for the RCMP. Indeed, last April, the Treasury Board of Canada approved the following salary increases for the RCMP:

- 1.25% effective January 1, 2015;
- 1.25% effective January 1, 2016; and
- a 2.3% market adjustment effective April 1, 2016.

(Exhibit K)

With this recent announcement and given the current Employer proposal of 1.25% for those 2 years, the 10% difference would increase even more if nothing is done to close the compensation gap between members of the FB group and the RCMP.

The Union proposal for general economic increases at 2.75% per year is also very much in line with salary increases agreed to for other major enforcement groups across Canada for 2014, 2015 and 2016.

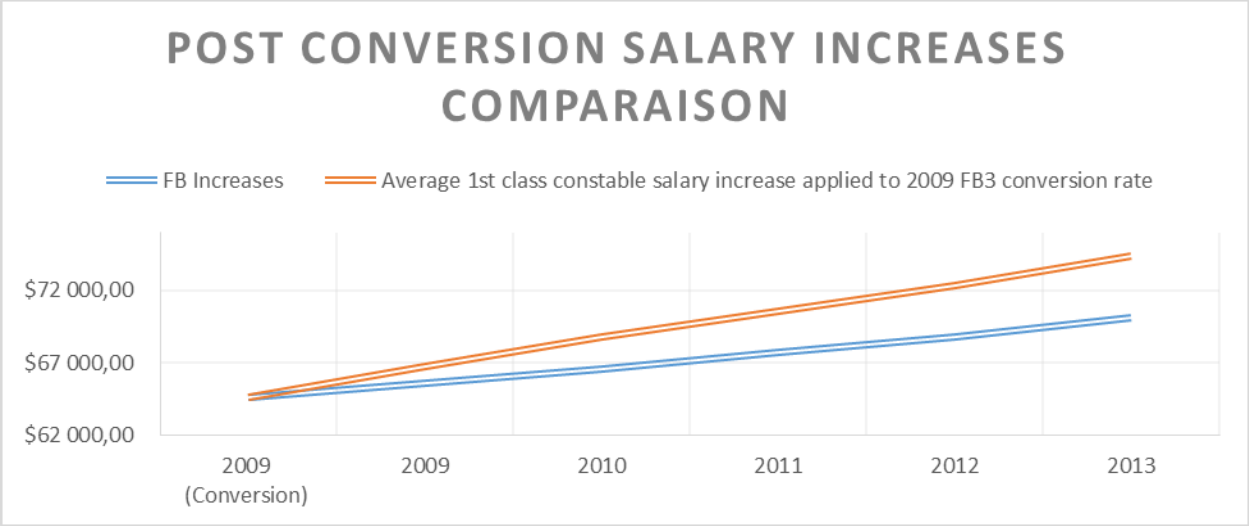
**Canadian First Class Constable Salary Increases**

| | | Salary Increases | | | |
|---|---|---|---|---|---|
| **Province** | **Jurisdiction** | **2014** | **2015** | **2016** | **2017** |
| National | RCMP | 2.00% | 1.25% | 3.55% | NA |
| NFLD | Royal NFLD Constabulary | 4.36% | NA | NA | NA |
| NS | Halifax | 2.21% | 2.75% | 2.75% | 2.75% |
| PEI | Charlottetown | 3.00% | 3.00% | 2.75% | NA |
| NB | Fredericton | 3.00% | 1.75% | NA | NA |
| QC | SQ | 2.00% | NA | NA | NA |
| QC | Montréal | 2.00% | 2.25% | 2.25% | 5.25% |
| ON | OPP | 8.55% | 2.65% | 1.95% | 1.90% |
| ON | Ottawa | 2.50% | NA | 2.05% | 1.90% |
| ON | Toronto | 2.00% | 2.75% | 1.95% | 1.90% |
| ON | York Reg. | 2.35% | 2.65% | 2.00% | 2.00% |
| ON | Peel Reg. | 2.50% | NA | NA | NA |
| MAN | Winnipeg | 3.50% | 3.00% | 3.00% | 2.50% |
| SASK | Saskatoon | 3.00% | 5.00% | 3.00% | NA |
| SASK | Regina | 3.10% | 3.30% | 3.00% | N/A |
| AB | Calgary | 2.25% | 2.75% | 3.00% | 2.50% |
| AB | Edmonton | 2.40% | 2.50% | 2.75% | N/A |
| BC | Vancouver | 2.00% | 2.50% | N/A | N/A |
| BC | Victoria | 2.00% | 2.50% | 3.50% | 2.50% |
| | **Average:** | **2.88%** | **2.71%** | **2.68%** | **2.58%** |

**(Exhibit L)**

On the other hand, the Employer proposal at 1.25% would only help to further exacerbate the gap between FB group members and their counterparts in the broader law enforcement communities.

As illustrated by the chart below, since the creation of the FB bargaining unit and the final conversion of members to their new FB classification standard in 2009 the significant differences in wage increases between FB members and their counterparts in the broader law enforcement community has continue to grow every year.




In light of this, the Union submits that the proposed 10% market adjustment and the 2.75% annual increases are entirely reasonable. 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.*[21]

A significant majority of FB group members have seen a widening 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.

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

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.

## 2. Fairness and relativity within the federal public administration

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 that time, no less than 68 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 N) 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 2's are doing the same work as an FB 3.(Exhibit 70)

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 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.

Fairness for Long Serving employees

An issue often raised by more senior members of the bargaining unit is that there is not sufficient – or any – additional compensation for workers with more years of service, beyond annual across-the-board wage increases. What we have proposed in this round of bargaining to address this concern is Long Service Pay, modeled on what is contained in our agreement with Treasury Board for the SV group (see Exhibit O). Unlike wage scales, which are based on a certain jobs being performed and achieving a certain competency, long service pay is based on years of service, regardless of which job or classification an employee is working. This premium represents a significant tool for retaining employees, particularly those that have been at the job rate for a certain period of time.

Long Service Pay is not a foreign concept in the public sector. Many public sector employers, such as airports, municipalities, territorial governments, and others have such a premium. It is a provision found in administrative bargaining units as well as operational bargaining units. To name a few, Employer's such as the government of Manitoba, Mount Royal University (Calgary), Children's Aid Society of Toronto, School District No. 57 (Prince George), City of Oshawa, City of Saint John, Government of Northwest Territories, many airports, etc. have such an incentive. Examples of such premiums can be found in (Exhibit O).

In the FB group, more than 45% of the bargaining unit have more than 10 years, while a significant majority are at the job rate. This proposal would serve as an incentive to experienced employees to remain an employee of CBSA. The Union respectfully submits that in light of the comparable presented, the concept of Long Service Pay is

well established in the public sector in Canada and would serve to provide additional recognition of the service of FB group members.

Integrated Border Services Allowance

In the last round of bargaining the parties agreed to put in place the Integrated Border Services Allowance (Exhibit P). This was a significant achievement for this bargaining unit since through this allowance, the employer officially recognized the additional responsibilities associated the integrated border services that support national and public safety. Although it was an important recognition the amount of the allowance was and continues to be insufficient. Under the current Appendix J, a Uniformed Officer receives a $1750 annual allowance and Non-Uniformed Officers receive a $1250 annual allowance.

The Union proposal is to increase the allowance to $2500 and to roll it into salary for all FB members. There are numerous examples of terminable allowances that were rolled into salary in recent core public service agreement.

It is also worth mentioning that the recent PSAC negotiated TC collective agreement contains a new annual allowance for enforcement and wildlife officers (Exhibit Q). GT employees who perform duties of Enforcement and Wildlife Officers at Environment Canada and who are fully designated with Peace Officer powers receive a $3000 annual allowance.

This new allowance recognizing the enforcement nature of the work performed by GT employees clearly demonstrates that the current $1750 annual allowance is insufficient and needs to be increased.

Fairness in the context of recent settlements

Although we argued that the distinction between the work perform by the vast majority of members of the FB group and other public service groups must be recognized, the Union submits that even when looking at recent core public administration settlements its wage proposal is reasonable. Especially given that the Employer's wage proposal is

completely out of sync with all recent settlement in the core public administration. If the Union was to agree to the Employer's wage proposal, it would agree to the worst wage settlement of all the recently negotiated settlements in the core public administration.

Treasury Board negotiates 27 collective agreement representing approximately 179,000 employees in the core public administration. So far in this round of bargaining, 19 of 27 tentative agreements have been reached, representing approximately 156,000 (87%) of the core employee population. Bargaining is ongoing for the following groups (no tentative settlements): Border Services (FB), Correctional Services (CX), Law (LA), Foreign Services (FS), Ships' Officers (SO), Aircraft Operations (AO), University Teaching (UT) and Air Traffic Control (AI).

***Recent PSAC settlements under the Public Service Labour Relations Act***

The PSAC and Treasury Board came to tentative agreements for the PA, SV, TC and EB groups late 2016 and early 2017. Those 4 agreements were signed by the parties in June 2017. Members received economic increases of 1.25 percent for each year of the 4-year agreement. It is important to note however that those 4 agreements included additional wages adjustments in fiscal 2015-2016, beyond the 1.25% general economic increases.

To date, the Employer has refused to entertain any monetary proposals beyond its own proposal at 1.25% per year. All proposals made by the Union during the course of negotiations, proposals that would simply align working conditions for employees in the FB bargaining unit with those of other Canadian law enforcement workers have been flatly rejected by the Employer.

The following table summarizes recent settlements reached by PSAC bargaining units in the core public administration.

| | Economic Increase | | | | Group specific adjustments |
|---|---|---|---|---|---|
| **Bargaining Unit** | **2014** | **2015** | **2016** | **2017** | |
| **Program and Administrative Services (PA) Group** | 1.25 | 1.25 | 1.25 | 1.25 | Effective June 21, 2016: 0.5% wage adjustment for all groups and levels<br><br>$650 Signing bonus |
| **Operational Services (SV) Group** | 1.25 | 1.25 | 1.25 | 1.25 | Effective August 5, 2016, market and wage adjustments for the following group:<br><br>Firefighters (FR): 15%<br>Heating, Power and Stationary Plant Operations **(**HP): 15%,<br>Vehicle Heavy Equipment Maintaining (GL-VHE): 9%<br>Electrical Installing and Maintaining (GL-EIM): 6%<br>Ship' Crew (SC): 5%<br>GL-MAM: 2.5%<br>GL-AMW: 2.5%,<br>GL-AIM: 2.5%,<br>GL-MST: 2.5%,<br>GL-PRW: 2.5%,<br>GL-GHW: 2.5%,<br>GL-INM: 2.5%,<br>GL-MAN: 2.5%,<br>GL-MOC: 2.5%,<br>GL-PIP: 2%<br>GL-WOW: 2%<br>LI group: 1.5%,<br>GS: 0.75%<br>HS: 0.75%,<br>GL-COI: 0.5%<br>GL-MDO: 0.5%<br>GL-ELE: 0.5%,<br>GL-PCF: 0.5%,<br>GL-SMW: 0.5%,<br>PR(S): 0.5%, |
| **Technical Services (TC) Group** | 1.25 | 1.25 | 1.25 | 1.25 | Effective June 22, 2016<br><br>**TI group (Aviation, Marine, Railway Safety)**<br>Terminable allowance rolled in the rates of pay and each level will receive an additional increment of 4%.<br><br>**TI group (Measurement Canada)**<br>new allowance of $3,000 per year. |

| | Economic Increase | | | | Group specific adjustments |
|---|---|---|---|---|---|
| | | | | | **TI (Labour Affairs Officers)**<br>new allowance of $3,000 per year for employees working at ESDC as Labour Affairs Officers at level TI-05.<br><br>**EG group**<br>EG allowance rolled in the rates of pay<br><br>**EG group (Fleet Maintenance Facilities)**<br>a new allowance of $2,500 per year for EG-06 level working at Fleet Maintenance Facilities.<br><br>**PI group:**<br>all levels of the PI Group will receive an additional increment of 4%<br><br>**Fishery Officer**:<br>new allowance of $3,000 per year.<br><br>**Enforcement and Wildlife Officers**<br>new allowance of $3,000 per year for Enforcement and Wildlife Officers who are fully designated with peace officer powers.<br><br>**GT group – Search and Rescue Coordinators** employees at GT-05 level working at Canadian Coast Guard in a Joint Rescue Coordination Centre or Maritime Rescue Sub-centre will receive a new annual allowance of 4%.<br><br>$650 Signing bonus for members who did not receive a group specific salary adjustment. |
| **Education and Library Science (EB) Group** | 1.25 | 1.25 | 1.25 | 1.25 | Effective July 1st 2016,<br><br>Market adjustment on all rates of pay for the following group:<br><br>ED-EST 12 month – 4%<br>And roll-in into wages of the $2,400 annual allowance.<br><br>ED-EST 10 month – 3%<br>LS – 3 %<br>EU – 0.5%<br>ED-EDS – 0.5%<br>ED-LAT – 0.5% |

| | Economic Increase | | | | Group specific adjustments |
|---|---|---|---|---|---|
| | | | | | $650 Signing bonus |

(Exhibit R)

**PA Group (Program and Administrative Services)**

The tentative agreement in this group provided for an additional adjustment in 2016 of 0.5% for all classifications and all levels. Furthermore, the penological factor allowance (PFA) and offender supervision allowance (OSA) were consolidated into a new correctional service specific duty allowance in this last agreement. The new allowance was expanded to members in community parole offices and community correctional centres and has been increased to $2,000 annually for all. Previously employees in maximum security institutions were already receiving $2,000. However, those in medium institutions were getting $1,000 and those in minimums were only receiving $600.

The recent PA agreement also increased the retention allowance for compensation advisors to $2,500 from $2,000. The allowance also applies to more incumbents as it was expanded to AS-01 and AS-03 compensation advisors (previously AS-02 only).

**SV Group (Operational Services)**

Over and above the 1.25% negotiated in every of the 4 year of the collective agreement, all classifications contained in the SV group received in 2016 an additional market or wage adjustment. Those market and range adjustments ranged from 15% to 0.5%. It is worth mentioning that both the FR (Firefighter) and HP (Heating, Power and Stationary Plant Operations) classification received a 15% market adjustment, 9% for GL-VHE (Vehicle Heavy Equipment Maintaining), 6% for GL-EIM (Electrical Installing and Maintaining) and 5% for SC (Ships' Crews).

**EB group (Education and Library Science)**

Here again, the tentative agreement contains significant monetary improvements to compensation for PSAC members. Over and above the 1.25% negotiated in every of the 4 year of the collective agreement, the tentative agreement contains further market adjustments for all occupations in the bargaining unit. Effective July 1st 2016 ED-EST 12 months' teachers received a 4% market adjustment. The annual allowance of $2400 was at the same time rolled-in to their base salary. ED-EST 10 months' teachers and LS's received a 3% market adjustment.

Similar to the PA group the penological factor allowance (PFA) and offender supervision allowance (OSA) were consolidated into a new correctional service specific duty allowance in this last agreement. Previously employees in maximum security institutions were already receiving $2,000. However, those in medium institutions were getting $1,000 and those in minimums were only receiving $600.

**TC Group (Technical Services)**

The TC tentative agreement contains significant improvements to monetary compensation. Further to the economic increases, the agreement includes a 0.5 wage adjustment in 2016 for all members, as well as allowances paid to specific occupations. Enforcement and Wildlife Officers at Environment and Climate Change Canada who are fully designated with peace officer powers now receive a new annual allowance of $3,000, for members GT-02, GT-03, GT-04 and GT-05 levels. Fishery Officers now receive a new annual allowance of $3,000 for members at the GT-02, GT-03, GT-04 and GT-05 levels. Technical Inspectors at Measurement Canada now receive a new annual allowance of $3,000, for members at the TI-03, TI-04, TI-05, TI-06, and TI-07 levels. Labour Affairs Officers at the TI-05 level now receive a new annual allowance of $3,000. Technical Inspectors at Measurement Canada now receive a new annual allowance of $3,000, for members at the TI-03, TI-04, TI-05, TI-06, and TI-07 levels. An additional increment of 4% was also added to the maximum rate of pay of PI levels.

Similar to the PA group the penological factor allowance (PFA) and offender supervision allowance (OSA) were consolidated into a new correctional service specific duty allowance in this last agreement. Previously employees in maximum security institutions were already receiving $2,000. However, those in medium institutions were getting $1,000 and those in minimums were only receiving $600.

Despite the fact that those 4 PSAC agreements contain increases beyond the annual 1.25 percent, to date in negotiation with the FB group the Employer has refused to entertain any monetary proposals that beyond its own proposal at 1.25% per year. All proposals made by the Union during the course of negotiations (market adjustments, long service pay, paid meal period, increase to the integrated border services allowances) proposals that would simply align working conditions for employees in the FB bargaining unit with those of other Canadian law enforcement workers have been flatly rejected by the Employer.

***Recent settlements for units under the Public Service Labour Relations Act***

The following table summarizes recent settlements reached by non PSAC bargaining units in the core public administration.

| | **Economic Increase** | | | | **Group specific adjustments** |
|---|---|---|---|---|---|
| **Bargaining Unit** | **2014** | **2015** | **2016** | **2017** | |
| **Applied Science and Patent Examination (SP [AC, AG, BI, CH, FO, MT, PC, SG-PAT, SG-SRE])** | 1.25 | 1.25 | 1.25 | 1.25 | Restructure pay scale SG-SRE group:<br>SG-SRE 3, 4 and 5: Remove 1st step for each level and add one step at the top of each level.<br>SG-SRE- 6: Add one step at the top.<br>SG-SRE 7 and 8: Remove 1st step for each level and add one step at the top of each level.<br>Restructure of the pay scale for the AC group:<br>AC-1: Remove 4 steps from the bottom of the AC-1 pay scale and add one step at the top of the AC-1 pay scale.<br>AC-2: Add one step at the top of the AC-2 pay scale.<br>Harmonization of pay scales for the Agriculture (AG), Biological Science (BI), Chemistry (CH) groups and added steps at the top of scale.<br>Forestry (FO) Group: added steps at the top of the pay scale. |

| | Economic Increase | | | | Group specific adjustments |
|---|---|---|---|---|---|
| | | | | | Meteorology (MT) group: 1% wage adjustment to all pay rates MT-2 to MT-7. |
| **Architecture, Engineering and Land Survey (NR [AR, EN])** | 1.25 | 1.25 | 1.25 | 1.25 | Land Survey Group Pay Restructure, effective April 1, 2016<br>EN-SUR 3: add 1 additional increment (3.0%) to the maxima<br>EN-SUR 4: add 1.5 additional increments (3.0%, 1.5%) to the maxima<br>EN-SUR 5: add 1 additional increment (3.0%) to the maxima<br>EN-SUR 6: add two 2 increments (3.0%, 3.0%) to the maxima<br>1% wage adjustment, effective April 1, 2016, for all Engineers (EN-ENG), Land Surveyor (EN-SUR) Level 1 and 2, and all Architects (AR).<br>0.25% wage adjustment, effective October 1, 2017, for Engineers (EN-ENG) at levels 3 and 4, and also for Architects (AR) at levels 4 and 5. |
| **Audit, Commerce and Purchasing (AV [AU, CO, PG])** | 1.25 | 1.25 | 1.25 | 1.25 | Effective June 22, 2016 AU - market adjustment of 1% to all levels. New increment of 3% for AU-1 to AU-6. PG - market adjustment of 1%. PG1- to PG-4 - new increment of 1.25% |
| **Computer Systems (CS)** | 1.25 | 1.25 | 1.25 | 1.25 | Effective April 1, 2016, a wage adjustment of 1.0% of the base pay is provided for the CS-01, CS-02, CS-03 and CS-04 groups and levels. |
| **Economics and Social Science Services (EC)** | 1.25 | 1.25 | 1.25 | 1.25 | Effective June 22, 2016, a 1% wage adjustment is added to the base rates of pay for all levels of the EC group |
| **Electronics (EL)** | 1.25 | 1.25 | 1.25 | 1.25 | A 2% wage adjustment added to the maximum salary step of each level, EL-01 to EL-09, prior to the September 1, 2016, economic increase. |
| **Financial Management (FI)** | 1.25 | 1.25 | 1.25 | 1.25 | 1% wage increase for all FIs effective November 7, 2016 prior to and in addition to the 2016 annual economic increase |

| | Economic Increase | | | | Group specific adjustments |
|---|---|---|---|---|---|
| **Health Services (SH [DE, ND, MD, NU, OP, PH, PS, SW, VM])** | 1.25 | 1.25 | 1.25 | 1.25 | NU/OP, nearly eliminated regional rates of pay, from 9 to 2. NU isolated communities - enhance recruitment allowance by $1000. DE/MD - 4% market adjustment. PS - 4% market adjustment and consolidation of the regional rates for the terminable allowance for Masters Level Registered Psychologists of the PS group in a single amount of six thousand dollars ($6,000) for all regions.. NU EMA- 2.5% wage adjustment at top step. PH - elimination of first 3 steps. |
| **Non-Supervisory Printing Services (PR(NS))** | 1.25 | 1.25 | 1.25 | 1.25 | Effective October 1, 2016, a 0.5% wage adjustment is added to the base rates of pay for all levels of the PR-NS group. |
| **Radio Operations (RO)** | 1.25 | 1.25 | 1.25 | 1.25 | Effective May 1, 2016, a 0.5% wage adjustment is added to the base rates of pay for all levels of the RO group. |
| **Research (RE [HR, MA, SE, DS])** | 1.25 | 1.25 | 1.25 | 1.25 | Effective October 1, 2016 - MA-01 to MA-07 - new increment of 3.45%. SE RES-01 to SE RES-05 - new increment of 3%. HR - market adjustment of 1%. |
| **Ship Repair (All Chargehand and Production Supervisor Employees Located on the East Coast) (SRC)** | 1.25 | 1.25 | 1.25 | 1.25 | On April 1, 2016, prior to any economic increase, provide all employees with a 1% wage adjustment;<br>On April 1, 2017, prior to any economic increase, roll-in of the Self Directed team premium of 1.75%. |
| **Ship Repair (East) (SRE)** | 1.25 | 1.25 | 1.25 | 1.25 | Provide all employees with a 0.5% wage adjustment. This is to be done on January 1, 2017. Move all employees in Pay Group 5 and Pay Group 6 to the maximum rate of pay of pay group 6. Provide all employees a one-time wage equalization payment of $650. |
| **Ship Repair (West) (SRW)** | 1.25 | 1.25 | 1.25 | 1.25 | Provide all employees, except for the Apprentices group, with a 3% wage adjustment; Adjust the starting rates of the Apprentices to 50 % of the increased pay rate of pay group 6 and then adjust all other rates of the Apprentices pay accordingly. These are to be done on January 31, 2017 prior to the economic increase. |
| **Translation (TR)** | 1.25 | 1.25 | 1.25 | 1.25 | All TR group pay scales will be adjusted by 0.75% retroactive to April 19, 2016. In addition, another scale adjustment of 0.50% will be applied on April 19, 2017. |

| | Economic Increase | | | | Group specific adjustments |
|---|---|---|---|---|---|
| **CRA-AFS Group** | 1.25 | 1.25 | 1.25 | 1.25 | Effective December 22, 2016 - market adjustment of 2.5% |

**(Exhibit R)**

Because salary increases are tied to averages in wage settlement data, MP salary increases act as a good example of how the employer's pay proposal is well behind average general economic increases. Under legislation, the yearly salary increases of MPs' are tied to the average wage settlements negotiated in private-sector companies with more than 500 employees. Based on this automatic progression formula, MP salaries increased at a rate of 6.3% over the last 3 years. As such, the employer's proposal of 1.25% per year is well below settlement averages used to determine MP salaries.

**MP Salary Increases (2014-2017)[22] (Exhibit S)**

| | 2014 | 2015 | 2016 | 2017 |
|---|---|---|---|---|
| **MP Salary Increase** | 2.20% | 2.30% | 1.80% | 1.35% |

Other relevant trends will be described at length in the following section and help demonstrate why the union's wage proposal is fair and consistent with recent settlements.

The above-listed negotiated settlements all include additional monetary gains beyond across-the-board, general economic increases of 1.25% per year.

The 19 tentative agreements signed by the Treasury Board all contain additional monetary compensation, wage adjustments and/or market adjustments to resolve long-standing compensation discrepancies. The employer has provided no cogent rationale

[22] Parliament of Canada (2016) "Indemnities, Salaries and Allowances: Members of the House of Commons". Accessed from: "http://www.lop.parl.gc.ca/ParlInfo/lists/Salaries.aspx?Menu=HOC-Politic&Section=03d93c58-f843-49b3-9653-84275c23f3fb

whatsoever as to why PSAC FB group members deserve an inferior wage settlement pattern in comparison with what has been afforded the vast majority of federal public service workers. The Union respectfully submits that the substantive compensation discrepancy that currently exists between the members of the FB group and other law enforcement workers in Canada (early retirement provisions, paid meal break, market adjustments and allowances), must be taken into account.

## 3. Fairness in the Context of Trends and Circumstances

This section will explore a variety of key financial indicators and projections to help contextualize current trends and national circumstances. The first part of this section will discuss the current and projected cost of living, measured by the Consumer Price Index. This data helps highlight how the employer's wage proposal is insufficient and far below rising costs of living in Canada. The second part of this section highlights figures related to unemployment rates to suggest that rates have steadily improved since 2009 and are forecasted to continue to decline in the coming years. The final part of this section explores important trends as it relates to wages and average projected increases that are on point with the union wage proposal.

### Cost of Living

The following table presents cost of living increases measured by the Consumer Price Index (CPI) for 2014, 2015 and 2016 as well as the forecasted increases to CPI for 2017 and 2018.

| Inflation All CPI (annual % change) | 2014 | 2015 | 2016 | 2017 F | 2018 F |
|---|---|---|---|---|---|
| **Scotia Bank[23]** | 2.00% | 1.10% | **1.40%** | **1.50%** | **1.80%** |
| **National Bank[24]** | 2.00% | 1.10% | **1.40%** | **1.70%** | **1.80%** |
| **Desjardins[25]** | 2.00% | 1.10% | **1.40%** | **1.50%** | **1.80%** |

[23] Scotia Bank - Global Economics (2 Août, 2017). "Global Economics: Latest Forecast Tables". Consulté au : http://www.gbm.scotiabank.com/scpt/gbm/scotiaeconomics63/forecast.pdf

[24] Banque Nationale - Analyse économique (Août, 2017). " Le mensuel économique : Économie et stratégie". Consulté sur : https://www.bnc.ca/content/dam/bnc/fr/taux-et-analyses/analyse-economique/mensuel-economique.pdf

[25] Desjardins - Études économiques (24 Août, 2017). "Prévision économique et financières".

| Inflation All CPI (annual % change) | 2014 | 2015 | 2016 | 2017 F | 2018 F |
|---|---|---|---|---|---|
| **BMO**[26] | 2.00% | 1.10% | **1.40%** | **1.50%** | **1.80%** |
| **CIBC**[27] | 2.00% | 1.10% | **1.40%** | **1.60%** | **2.10%** |
| **RBC**[28] | 2.00% | 1.10% | **1.40%** | **2.00%** | **2.20%** |
| **TD Economics**[29] | 2.00% | 1.10% | **1.40%** | **2.10%** | **1.90%** |
| **Average** | **2.00%** | **1.10%** | **1.40%** | **1.70%** | **1.91%** |

The numbers in the table above show the overall increase of inflation from 2014 to 2016 was higher (4.5%) than the increases provided by the employer's proposal over the same period (3.75%). Projections for 2017 tell a similar story, if inflation is at 1.70% the employer proposal of 1.25% is insufficient. What is clear is that members of the FB Group would lose buying power under the employer's proposed increases.

### Employment and Unemployment

With respect to unemployment rate, since 2009 there has been a gradual decline from 8.3% to 7% in 2016. This gradual decline is expected to continue for the next two years as Canadian banks forecast an average unemployment rate of 6.54% this year and 6.33% in 2018. Overall, this trend of unemployment rate decline is an indicator that the Canadian economy is doing well.

| Unemployment rate | 2014 | 2015 | 2016 | 2017 F | 2018 F |
|---|---|---|---|---|---|
| **Scotia Bank**[30] | 6.90% | 6.90% | 7.00% | 6.50% | 6.40% |
| **National Bank**[31] | 6.90% | 6.90% | 7.00% | 6.60% | 6.40% |
| **Desjardins**[32] | 6.90% | 6.90% | 7.00% | 6.50% | 6.30% |

Consulté au : https://www.desjardins.com/ressources/pdf/pefm1708-f.pdf?resVer=1503581655000

[26] BMO Marchés des capitaux (25 Août, 2017). "Provincial Economic Outlook" Consulté au: https://economics.bmocapitalmarkets.com/economics/forecast/prov/ProvincialOutlook.pdf

[27] CIBC Capital Markets (15 Août, 2017). "Economic Update".
Consulté au : https://economics.cibccm.com/economicsweb/cds?ID=3561&TYPE=EC_PDF

[28] Recherche économique RBC (Juin, 2017). "Perspective provinciales". Consulté au : http://www.rbc.com/economie/economic-reports/pdf/provincial-forecasts/provtbl_fr.pdf

[29] Services économiques TD (22 Juin, 2017). "Perspectives économiques provinciales".
Consulté au: https://www.td.com/francais/document/PDF/economics/qef/ProvincialEconomicForecast_Jun2017_fr.pdf

[30] Scotia Bank - Global Economics (2 Août, 2017). "Global Economics: Latest Forecast Tables".
Consulté au : http://www.gbm.scotiabank.com/scpt/gbm/scotiaeconomics63/forecast.pdf

[31] Banque Nationale - Analyse économique (Août, 2017). " Le mensuel économique : Économie et stratégie". Consulté sur : https://www.bnc.ca/content/dam/bnc/fr/taux-et-analyses/analyse-economique/mensuel-economique.pdf

[32] Desjardins - Études économiques (24 Août, 2017). "Prévision économique et financières".
Consulté au : https://www.desjardins.com/ressources/pdf/pefm1708-f.pdf?resVer=1503581655000

| Unemployment rate | 2014 | 2015 | 2016 | 2017 F | 2018 F |
|---|---|---|---|---|---|
| **BMO**[33] | 6.90% | 6.90% | 7.00% | 6.50% | 6.10% |
| **CIBC**[34] | 6.90% | 6.90% | 7.00% | 6.50% | 6.30% |
| **RBC**[35] | 6.90% | 6.90% | 7.00% | 6.60% | 6.30% |
| **TD Economics**[36] | 6.90% | 6.90% | 7.00% | 6.60% | 6.50% |
| **Average** | **6.90%** | **6.90%** | **7.00%** | **6.54%** | **6.33%** |

***Relevant Settlement Trends (2014-2017)***

Settlement trends in the public sector demonstrate how the employer's proposed rates of pay are well below recent settlements featured in the following table.

Private sector wage settlements under federal jurisdiction was 2.1% for 2014, 2.4% for 2015 and 1.4% in 2016 and 2.2% so far in 2017. For the same period, it was at 1.2%, 1.7% and 1.3% and 1.4 in the public federal jurisdiction according to Information published by the Human Resources and Social Development Canada's Labour Program (Strategic Policy, Analysis, and Workplace Information Directorate). It also shows that wage adjustments in the public sector have been consistently below the private sector, in part due to governments' artificial intervention.

**Average annual percentage wage adjustments in the Federal Jurisdiction by year**[37]

| | 2014 | 2015 | 2016 | 2017 |
|---|---|---|---|---|
| **Public** | 1.2 | 1.7 | 1.3 | 1.4 |
| **Private** | 2.1 | 2.4 | 1.4 | 2.2 |
| **Average** | 1.5 | 2.4 | 1.3 | 1.5 |

It is noteworthy that the Employer's proposal is below the market trends in Federal Jurisdiction. It is also below market trends when compared to the wage settlements in

[33] BMO Marchés des capitaux (25 Août, 2017). "Provincial Economic Outlook" Consulté au: https://economics.bmocapitalmarkets.com/economics/forecast/prov/ProvincialOutlook.pdf
[34] CIBC Capital Markets (15 Août, 2017). "Economic Update".
Consulté au : https://economics.cibccm.com/economicsweb/cds?ID=3561&TYPE=EC_PDF
[35] Recherche économique RBC (Juin, 2017). "Perspective provinciales". Consulté au :
http://www.rbc.com/economie/economic-reports/pdf/provincial-forecasts/provtbl_fr.pdf
[36] Services économiques TD (22 Juin, 2017). "Perspectives économiques provinciales".
Consulté au: https://www.td.com/francais/document/PDF/economics/qef/ProvincialEconomicForecast_Jun2017_fr.pdf
[37] Strategic Policy, Analysis, & Workplace Information Directorate, Labour Program, HRSDC. https://www.canada.ca/en/employment-social-development/services/collective-bargaining-data/wages/wages-year-sector.html

the Public Administration (provincial and federal), which was 1.7% in 2014, 1.5% in 2015, 1.5% in 2016 and 1.5% so far in 2017.

Salary forecasts

According to numerous surveys, employers are planning to increase salaries by an average of between 2.0% to 2.6% in 2017. These projections have been derived by research conducted by the Conference Board of Canada, Morneau Shepell, Tower Watson, Mercer and Hay Group.

| Salary Forecasts (2017) | | |
|---|---|---|
| **Observer** | **Sector** | **Projected Increase** |
| Conference Board | Public Sector | 2.0% |
| | Private Sector | 2.3% |
| Morneau Shepell | All-sector | 2.1% |
| Tower Watson | Professionals | 2.6% |
| Mercer | All-sector | 2.6% |
| Hay Group | All-sector | 2.2% |

(See Exhibit T)

Given consistently strong wage projections for 2017, the Union submits that the employer wage proposal is well below market trends.

***Recruitment and retention challenges***

Attracting youth to a career in law enforcement has become increasingly difficult for police recruiters. Not only does the labour pool in Canada continue to shrink, it is also aging.

With an aging demographic, the labour pool in Canada continues to shrink and research demonstrates that interest in policing as a career has been decreasing. When considering potential careers, one of the most important factors for youth continues to be salary. As the FB Group salaries continue to fall behind their closest comparators it will becomes more of a challenge to attract new recruits. There is already clear signal of the recruitment challenges faced by CBSA, as over the course of the past 3 years the

CBSA has gone to great lengths to advertise employment with the agency, from you tube videos to requiring some officers at certain ports of entry to hand out brochures to the public encouraging individuals to apply for a job as a Border Services Officer.

Various labour market conditions may affect the recruitment of new employee in law enforcement occupations. The Police Sector Council (PSC) 'Youth Attitudes Findings Roll Up 2005-2011' report details a continued decline in Canadian youth considering a career in policing. In 2005, 5% of youth surveyed were interested in policing as a career; by 2010, only 3% were interested. This same population in both 2005 and 2010 consistently reported "pay and other forms of monetary compensation" as one of the three most important factors when considering future employment prospects
(Exhibit U).

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With declining interest in policing as a career, an aging Canadian population and the increased competition among other law enforcement agencies, it has become increasingly difficult to attract the requisite number of applicants.

As demonstrated in the table below many of the CBSA programs were significantly below their optimal planned level in the last year. Most notably, the admissibility determination, criminal investigation, immigration enforcement and Revenue and Trade Management programs were all seriously understaffed.

## CBSA Human Ressources (FTEs)

| | 2015-2016 Planned | 2015-2016 Actual | 2015-2016 Difference (Actual Minus Plan) |
|---|---|---|---|
| Total | 13707 | 13774 | 67 |
| Risk Assesment | 1051 | 1183 | 132 |
| Secure and Trusted Partnerships | 370 | 411 | 41 |
| Admissibility Determination | 7655 | 7449 | -206 |
| Criminal Investigation | 305 | 259 | -46 |
| Immigration Enforcement | 1173 | 1088 | -85 |
| Recourse | 113 | 110 | -3 |
| Revenue and Trade Management | 911 | 766 | -145 |
| Internal Services | 2129 | 2508 | 379 |

** Data from 2015–16 Departmental Performance Report
http://www.cbsa-asfc.gc.ca/agency-agence/reports-rapports/dpr-rmr/2015-2016/report-rapport-eng.html#section3a_1.7

### Summary

In conclusion, the Union's proposals concerning economic adjustments for members of the FB group reflect broader economic trends both inside and outside the federal public service. As has been demonstrated here, the employer's current position with respect to wages is well below economic forecasts and inflationary patters. As was reflected in a great many wage settlements in the core public administration, the pattern with respect to compensation in the federal public service has reflected compensation for employees over and above what the Employer has tabled with the FB group. The Employer's position in negotiations has been that its position reflects what the Union agreed to with its other group in the recent round of bargaining. This argument is inaccurate. The Union's proposals are modeled on what already exists elsewhere in the federal public service. The Union's proposals with respect to wages addresses the internal relativity gap experienced by the FB group member in relation to its closest comparator at the Federal level, the RCMP. It is also aimed at maintaining the current relativity of the new FB group to the its external comparators in the broader law enforcement community. This proposal is both fair and reasonable, and is based on the key legislative and

arbitral principle that employees in one bargaining unit should enjoy wages comparable to those enjoyed by employees who are doing work of a similar nature elsewhere in the Canadian labour market. In light of these facts, the Union submits that its economic proposals are both fair and reasonable. Consequently, the Union respectfully requests that they be included in the Commission's recommendations.

***NEW***
***EARLY RETIREMENT FOR FB WORKERS***

**PSAC PROPOSAL:**

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 the table 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.

Early retirement provisions – Public Safety Canada

| Plan & Group | Unreduced retirement | Early Retirement |
|---|---|---|
| PSSA<br>Public Service Main Group<br>(Including FB members) | Age 60; or<br>Age 55 with at least 30 years of service. | Age 50 with at least 25 years of service.<br><br>Reduction is 5% per year before unreduced retirement. |
| PSSA<br>Operational Service Group<br>(Including Correctional Officers) | Age 60; or<br>25 years of service. | Reduced 5% per year before unreduced retirement. |
| RCMP Superannuation act<br>Regular Members | Age 60; or<br>25 years of service. | Reduced 5% per year before unreduced retirement. |

The following table illustrates 2 different age and service scenarios under both the PSSA Regular and Operational Service Group provisions. 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, it is clear that in many instances there would be no extra cost incurred by the Employer with the introduction of early retirement scheme.

| **Scenario** | **I** | **II** | **III** | **IV** |
|---|---|---|---|---|
| **Group** | **Regular Group (Including FB)** | **Regular Group (Including FB)** | **Operational Service Group (Union proposal)** | **Operational Service Group (Union proposal)** |
| Attained Age | 55 | 60 | 55 | 60 |
| Service | 25 | 30 | 25 | 30 |
| Reduction | 25% | 0% | 0% | 0% |
| Pension entitlement | **37.5%** =25*2%*(1-25%) | **60%** | **50%** =25*2% | **60%** |
| Comment | Under this scenario, 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 this scenario, an employee may very well retire, as the 60% pension could be sufficient to meet retirement income objective | Under this scenario, 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 | Under this scenario, an employee may retire, but the retirement age, and pension, would be the same as under the regular PSSA rules.<br><br><u>There would be no cost to providing the enhance PSO rules over the regular PSSA rules</u>. |

*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.

With the passage of Bill C-45 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 the passing of Bill C-45. 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, as long as 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.

The Union submits that his unilateral legislative pension change renders the need for pension reform for employees in the FB bargaining unit even more acute.

**Dangerous work with demanding physical training regimes:**

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 V), 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 W).

- 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 X).

- 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 Y) and bargaining unit (Exhibit Z) 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 aforementioned 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.

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 as a whole. It is clear that 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.

A table 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 behind other major Canadian law enforcement agencies. 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) All of these groups have better early retirement provisions than members of the FB group.

## 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 as 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 10).

## Low cost to do the right thing

One factor to be cognizant of when considering the cost associated 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. See table below:

| Scenario | 1- Under the current PSSA provision | 2- Under PSAC proposal | 3- Under PSAC proposal |
|---|---|---|---|
| Attained Age | 55 | 55 | 60 |
| Service | 25 | 25 | 30 |
| Reduction | 25% | 0% | 0% |
| Pension entitlement | **37.5%** =25*2%*(1-25%) | **50%** =25*2% | **60%** =30*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.

Under 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.

The costs of bringing retirement provisions for employees in the FB bargaining unit in line with those of other federal enforcement workers are relatively limited.

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.

# *3. 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, dog handler allowance, 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 legal indemnification, 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[38]. They are responsible for the

[38] CBSA Legislation, Regulations and Other Instruments: http://www.cbsa-asfc.gc.ca/agency-agence/legislation-eng.html

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 two rounds of bargaining some progress was made. But it has now been almost ten years since the creation of the FB bargaining unit, and 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.

# *4. EXHIBITS*