

**IN THE MATTER OF AN INTEREST ARBITRATION UNDER THE *PUBLIC SERVICE RELATIONS ACT* (PSLRA)**

**BETWEEN:**

**THE PUBLIC SERVICE ALLIANCE OF CANADA**

**(the “Union”)**

**-and-**

**STATISTICAL SURVEY OPERATIONS**

**(“SSO” or the “Employer”)**

**And in the matter of a dispute about the terms to be included in collective agreement that will run from December 1, 2011 until November 30, 2014**

**BOARD OF ABITRATION:**

Christine Schmidt, Chair  
Guy Lauzé, Employer Nominee  
Joe Herbert, Union Nominee

**APPEARANCES:**

**For the Employer:** Gloria Tatone Blaker, SSO Negotiator  
Yves Lachance, Regional Manager, Management Services

**For the Union:** Morgan Gay, National Negotiator PSAC  
Julie Chiasson, Research Officer PSAC

This hearing was held in Ottawa on November 11 and 12, 2013.

## **Introduction**

(1) This is an interest arbitration under the *Public Service Labour Relations Act* (“PSLRA”). The board of arbitration (“board”) has been appointed to adjudicate upon the issues that remain in dispute between the parties in respect of the negotiation of a renewal agreement to the collective agreement between them that expired on November 30, 2011. There is no dispute with respect to our authority. The renewal collective agreement, the term of which is agreed by the parties, is from December 1, 2011 to November 30, 2014.

## **Background and General Considerations**

(2) Statistical Survey Operations (“SSO”) is a separate employer under the PSLRA. The Union is the bargaining agent for two bargaining units at SSO, one of which is the Regional Office (“RO”) bargaining unit. On June 27, 1988, the Union was certified to represent approximately 260 interviewers and senior interviewers. On January 27, 2000, the Public Service Staff Relations Board amended the certificate to add all interviewers and senior interviewers working in Statistics Canada regional offices.

(3) This bargaining unit has approximately 715 employees (as of October 2013), all of whom are employed on a part-time basis with no guaranteed hours of work. Approximately 90% of the employees in the RO unit are interviewers. The others are senior interviewers. Approximately 65% of employees in the RO unit are women. These public service employees perform data gathering activities, primarily through telephone interviewing (or in the case of senior interviewers supervise such activities) in a “call centre” environment located in five regional Statistics Canada offices in Halifax, Nova Scotia, Sherbooke, Quebec, Sturgeon Falls, Ontario, Winnipeg, Manitoba and Edmonton, Alberta. Employees of Statistics Canada manage the interviewers and senior interviewers through its regional office management structure.

(4) The over one thousand two hundred Public Service Alliance of Canada members working at Statistics Canada (other than those employed by SSO) are covered by the Treasury Board PA collective agreement. The collective agreement between the parties is generally modeled after the PA agreement.

(5) The parties' collective agreement expired on November 30, 2011. Notice to bargain was served under the PSLRA on November 24, 2011. In October 2012, the Union declared an impasse and filed for arbitration. The Employer raised jurisdictional issues that were heard by the PSLRB in March 2013 and the Board's decision was issued on August 27, 2013. The Union filed for judicial review of that decision. In September 2013, the Union brought a motion to dissolve the board, or in the alternative to adjourn the hearing on November 11 and 12, 2013. The hearing proceeded as mandated by the board's procedural ruling issued October 9, 2013. As the Union's application for judicial review of the Board's decision has been dismissed, this arbitral award is issued.

(6) The following issues remain in dispute:

- Article 2 – Interpretation and Definitions
- Article 14 – Leave With or Without Pay for Alliance Business
- Article 17 – Sexual Harassment
- Article 19 – Health and Safety
- Article 20 – Job Security
- Article 23 – Hours of Work
- Article 25 – Evening and Weekend Premiums
- Article 26 – Designated Holidays
- Article 30 – Vacation Leave
- Article 31- Sick Leave With Pay
- Article 32- Injury-On-Duty Leave
- Article 40 – Marriage Leave with Pay
- Article 42 – Bereavement Leave with Pay

- Article 50 – Severance Pay
- Annex A – Hourly Rates of Pay and Pay Notes
- Annex F – Social Justice Fund
- Annex G – Operational Requirements
- Joint Learning Program – New Memorandum of Understanding

(7) In assessing the merits of the outstanding issues in dispute, the board is guided by the applicable legislative framework. Section 148 of the PSLRA outlines those factors the board must take into account in rendering its arbitral award:

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

- (a) the necessity of attracting competent persons to, and retaining them in, the public service in order to meet the needs of Canadians;
- (b) the necessity of offering compensation and other terms and conditions of employment in the public service that are comparable to those of employees in similar occupations in the private and public sectors, including any geographic, industrial or other variations that the arbitration board considers relevant;
- (c) the need to maintain appropriate relationships with respect to compensation and other terms and conditions of employment as between different classification levels within an occupation and as between occupations in the public service;
- (d) the need to establish compensation and other terms and conditions of employment that are fair and reasonable in relation to the qualifications required, the work performed, the responsibility assumed and the nature of the services rendered; and
- (e) the state of the Canadian economy and the Government of Canada's fiscal circumstances.

(8) With reference to the above, SSO asserted that retention is difficult given the nature its work, combined with the hours of work during which interviews, particularly household surveys are carried out. SSO argues that its ability to retain its employees is “reasonable” in the circumstances. In asserting the retention of its employees is “reasonable,” SSO equates its challenges with those of the private tourism sector. The board cannot agree with SSO's approach to the issue. As of November 2011, 85% of the bargaining unit (which has since decreased

significantly in size) had 4 years or less of continuous service with SSO. Given the legislative criterion in section 148 (a) reproduced above, the apparent difficulty in retaining these employees in the public service in order to meet the needs of Canadians is of concern to the board.

(9) Further, in referencing the applicable legislative framework, SSO suggests that there are no public sector comparators for the members of the RO bargaining unit. SSO asserts that only the private sector offers appropriate market comparisons. The board cannot agree. While the legislative framework speaks to an assessment of comparability to employees in similar occupations in both the private and public sectors, to accept SSO's argument would be to ignore that which is set out in 148 (c) altogether. There are other bargaining units within the broader federal public administration where employees are part-time, provide their availability to work and are not guaranteed hours of work.

(10) Finally, contrary to SSO's submission, members of this bargaining unit are federal public servants. Cognizant that the interviewers and senior interviewers at SSO are part-time employees, without guaranteed hours of work, whose employer faces challenges given the nature of the work it undertakes, and considering the parties' submissions, the board's view is that these employees lag behind their federal counterparts.

(11) In reaching our conclusions on the outstanding items in dispute, the board has been governed by the long accepted principles of interest arbitration including replication/comparability, total compensation and demonstrated need as well as the specific factors it is mandated to consider under the PSLRA. We have considered the proposals before us and made the tradeoffs and compromises warranted in light of them.

(12) Having regard to all the foregoing, we award as follows.

## **AWARD**

(13) We direct the parties to enter into a renewal collective agreement for the term of December 1, 2011 to November 30, 2014. The collective agreement shall consist of the unchanged items from the collective agreement that expired on November 30, 2011, the items agreed by the parties themselves, and the board's award on only those items set out herein. Any proposal not explicitly dealt with in this Award is denied. All items, whether agreed to by the parties or awarded by the board are effective the date of the award unless specified otherwise.

(14) There is no dispute with respect to our authority.

(15) On the question of duration, the parties had reached agreement on a three-year term, expiring November 30, 2014. We are cognizant, however, of section 156(3) of the PSLRA which stipulates that "an arbitral award may not be for a term of less than one year or more than two years from the day on which it becomes binding on the parties, unless the arbitration board determines otherwise in any case where paragraph 2(a) or (b) applies". In the unique facts before us, it is our considered opinion that an operative term outside the prescribed time periods is warranted and that the exception under section 156 para 2(b)(ii) applies.

(16) We note that previous collective agreements applicable to this bargaining unit have traditionally corresponded with the prevailing bargaining cycles and collective agreements in the federal public service. Currently all collective agreements in the federal public service have expired in 2014 with two minor exceptions, which expired in January of 2015. Complying with the time periods prescribed in section 156(3) would therefore place the bargaining two years forward of the other collective agreements and represent an untenable situation. Due to the exceptional nature of the delay caused by the judicial review process described earlier for which a Federal Court decision was rendered on January 16,

2015, with expiration of the appeal period a month later, on February 16, 2015, the parties agreement, and application of 156(2)(b)(ii) we hereby stipulate that the duration of the collective agreement will be from December 1, 2011 to November 30, 2014 inclusive.

## **Article 2 – Interpretation and Definitions**

(17) The collective agreement provides for a definition of “**assigned workweek.**” The following shall be added to that definition:

In the event that an employee believes that his/her assigned workweek is inconsistent with his/her actual hours, the employee may request a review of the Employer.

(18) In addition, the parties are directed to negotiate language to ensure that the Employer corrects inconsistencies between employees’ assigned workweeks and employees’ actual hours worked. Corrections are to be made on a go forward basis. The board shall remain seized should the parties be unable to agree on language to reflect the board’s direction.

(19) The collective agreement does not define “**indeterminate employee**” or “**years of service.**” The definitions of these terms are to be added to the collective agreement. They are as follows:

“**Indeterminate employee**” means an employee whose employment does not have a predetermined end date.

“**Years of service**” means 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.

**Article 14 – Leave With or without Pay for Alliance Business**

(20) The following clause is to be added to the collective agreement and the numbers referenced throughout Article 14 amended accordingly:

14.10 The Employer shall grant leave with pay to an employee acting on behalf of the Alliance for discussions with the Employer as contemplated by Article 22.06.

**Article 20 – Job Security**

(21) The following clauses are to be added to the collective agreement and the numbers referenced throughout Article 20 amended accordingly:

20.01 It is the policy of the Employer to maximize employment opportunities for indeterminate employees affected by work force adjustment situations, primarily through ensuring that, wherever possible, alternative employment opportunities are provided to them. This should not be construed as the continuation of a specific position or job but rather as continued employment.

20.02 Since indeterminate employees who are affected by work force adjustment situations are not themselves responsible for such situations, it is the responsibility of the Employer to ensure that they are treated equitably and, whenever possible, given every opportunity to continue their careers as SSO employees.

(22) Article 20.03 as it currently reads is to be renumbered as Article 20.05 and amended as follows:

20.05 A person who has been laid-off pursuant to clause 20.04 is entitled to a priority for appointment without competition to a position in SSO for which in the opinion of the Employer, which shall not be unreasonably exercised, he/she is qualified. This priority is accorded for one (1) year following the lay-off date.



**Article 23 – Hours of Work**

- (23) Article 23.08 (a) is to be amended as follows:

23.08

(a) The Employer shall set up a master hours of work schedule of at least twenty eight (28) calendar days, posted seven (7) days in advance, which will cover the normal requirements of the work area.

- (24) Article 23.20 is to be amended as follows:

23.20 Notwithstanding clause 23.18, where operational requirements permit, the Employer will endeavour to offer additional work available at a work site to readily available qualified employees at that work site, irrespective of the nature of the survey, prior to hiring additional staff. Subject to the foregoing, the Employer may hire additional staff and is not precluded from hiring additional staff prior to providing employees with full time hours.

**Article 25 – Evening and Weekend Premiums**

- (25) Articles 25.01 and 25.02 are to be amended as follows:

Evening Premium

25.01 An employee whose hours of work are scheduled to extend beyond 5:00 p.m. will receive a premium of two dollars (\$2.00) for each hour worked, including overtime hours, between 5:00 p.m. and 6 a.m.

Weekend Premium

25.02 An employee whose hours of work are scheduled on a weekend will receive an additional premium of two dollars (\$2.00) per hour for each hour worked, including overtime hours, on Saturday and/or Sunday.

**Article 30 – Vacation Leave**

(26) Article 30.03 of the collective agreement is to be amended as follows:

30.03 For the purpose of clause 30.02 only, all service within the Public Service, whether continuous or discontinuous, shall count toward vacation leave 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.

For greater certainty, severance payments taken under Article 50.05 to 50.09, or under similar provisions in other collective agreements, do not reduce the calculation of service for persons who have not yet left Statistical Survey Operations.

Article 30.05

(27) Add 30.05 (c) to the collective agreement:

(c) In the event that there are more vacation leave requests for a certain period of time than can be accommodated by the Employer, and the Employer has yet to grant such requests, employee years of service shall be the determining factor for the granting of vacation leave.

**Article 40 – Marriage Leave With Pay**

(28) The heading for Article 40 - Marriage Leave With Pay is to be amended as follows:

**Article 40**  
**One Time Vacation Leave**

Articles 40.01 and 40.02 are replaced with the following:

40.01 After the completion of two (2) years continuous employment with Statistical Survey Operations and providing an employee gives the Employer at leaves five (5) days' notice, an employee shall be credited with a one-time entitlement of five days vacation leave with pay.

**Article 42 – Bereavement Leave With Pay**

(29) Article 42.01 is amended as follows:

42.01 When a member of the employee's family dies, an employee shall be entitled to a bereavement period of seven (7) consecutive calendar days. Such bereavement period, as determined by the employee, must include the day of the memorial commemorating the deceased, or must begin within two (2) days following the death. During such period the employee shall be paid for those days which are not regularly scheduled days of rest for the employee. In addition, the employee may be granted up to three (3) days' leave with pay for the purpose of travel related to the death.

**Article 50 – Severance Pay**

(30) Effective one month following the date of this award, Articles 50.01(b) and (d) are to be deleted from the collective agreement, with the subsection letter references amended accordingly.

50.01 Under the following circumstances and subject to clause 50.02, an employee shall receive severance benefits calculated on the basis of his or her averaged weekly rate of pay:

(a) Lay-Off

(i) On the first lay-off, for the first complete year of continuous employment, two (2) weeks' pay, or three (3) weeks' pay for employees

with ten (10) or more but less than twenty (20) years of continuous employment, or four (4) weeks' pay for employees with twenty or more years of continuous employment, plus one (1) week's pay for each additional complete year of continuous employment and, in the case of a partial year of continuous employment, one (1) week's pay multiplied by the number of days of continuous employment divided by three hundred and sixty-five (365).

(ii) On second or subsequent lay-off, one (1) week's pay for each complete year of continuous employment and, in the case of a partial year of continuous employment, one (1) week's pay multiplied by the number of days of continuous employment divided by three hundred and sixty-five (365), less any period in respect of which the employee was granted severance pay under 50.01(a)(i).

(b) Resignation

On resignation, subject to clause 50.01(d) and with ten (10) or more years of continuous employment, one-half ( $\frac{1}{2}$ ) week's pay for each complete year of continuous employment up to a maximum of twenty-six (26) years with a maximum benefit of thirteen (13) week's pay.

(c) Rejection on Probation

On rejection on probation, when an employee has completed more than one (1) year of continuous employment and ceases to be employed by reason of rejection during a probationary period, one (1) week's pay for each complete year of continuous employment with a maximum benefit of twenty-seven (27) weeks' pay.

(d) Retirement

(i) On retirement, when an employee is entitled to an immediate annuity under the *Public Service Superannuation Act* or when he or she is entitled to an immediate annual allowance, under the *Public Service Superannuation Act*;

or

(ii) an employee, who regularly works more than thirteen and one-half ( $13\frac{1}{2}$ ) but less than thirty (30) hours a week, and who, if he/she were a contributor under the *Public Service Superannuation Act*, would be entitled to an immediate annuity thereunder, or who would have been entitled to an immediate annual allowance if he/she were a contributor under the *Public Service Superannuation Act*, a severance payment in respect to the employee's complete period of continuous employment, comprised of one (1) week's pay for each complete year

of continuous employment and, in the case of a partial year of continuous employment, one (1) week's pay multiplied by the number of days of continuous employment divided by 365, to a maximum of thirty (30) week's pay.

(e) Death

If an employee dies, there shall be paid to the employee's estate a severance payment in respect of the employee's complete period of continuous employment, comprised of one (1) week's pay for each complete year of continuous employment and, in the case of a partial year of continuous employment, one (1) week's pay multiplied by the number of days of continuous employment divided by 365, to a maximum of thirty (30) weeks' pay, regardless of any other benefit payable.

(f) Termination for Cause for Reasons of Incapacity

When an employee has completed more than one (1) year of continuous employment and ceases to be employed by reason of termination for cause for reasons of incapacity pursuant to Section 12(2)(d) of the Financial Administration Act, one week's pay for each complete year of continuous employment with a maximum benefit of twenty-eight (28) weeks.

50.02 Severance benefits payable to an employee under this Article shall be reduced by any period of continuous employment in respect of which the employee was already granted any type of termination benefit. Under no circumstances shall the maximum severance pay provided under clause 50.01 and 50.06 be pyramided.

For greater certainty, payments made pursuant to 50.05 to 50.09 or similar provisions in other collective agreements shall be considered as a termination benefit for the administration of this clause.

50.03 The weekly rate of pay referred to in the above clauses shall be the weekly rate of pay to which the employee is entitled on the date of the termination of his/her employment.

50.04 Notwithstanding the provisions of this Article, the amount of the severance benefit to be paid shall be calculated as follows: to determine the number of complete years of continuous employment in respect of which the severance benefit is to be paid, the period of continuous employment eligible for severance pay shall be established and the total of all straight time hours worked in that period shall be divided by nineteen hundred and fifty (1950). The number of complete years of

employment so established shall be multiplied by the appropriate weekly rate of pay to produce the severance benefit.

#### 50.05 Appointment to another Public Service Employer

An employee who resigns to accept an appointment with another organization listed in Schedule I, IV or V of the Financial Administration Act shall be paid all severance pay resulting from the application of 50.01.

#### 50.06 Severance Termination

(a) Subject to 50.02 above, ongoing employees employed by Statistics Survey Operations on the 30<sup>th</sup> day following the date of this award shall be entitled to a severance payment equal to one (1) week's pay for each complete year of continuous employment and, in the case of a partial year of continuous employment, one (1) week's pay multiplied by the number of days of continuous employment divided by three hundred and sixty-five (365), to a maximum of thirty (30) weeks.

(b) Subject to 50.02 above, term employees employed by Statistics Survey Operations on the 30<sup>th</sup> day following the date of this award shall be entitled to a severance payment equal to one (1) week's pay for each complete year of continuous employment, to a maximum of thirty (30) weeks.

#### Terms of Payment

#### 50.07 Options

The amount to which an employee is entitled shall be paid, at the employee's discretion, either:

(a) as a single payment at the rate of pay of the employee's substantive position as of the 30<sup>th</sup> day following the date of this award or

(b) as a single payment at the time of the employee's termination of employment from Statistical Survey Operations, based on the rate of pay of the employee's substantive position at the date of termination of employment from Statistical Survey Operations, or

(c) as a combination of (a) and (b), pursuant to 50.08(c).

#### 50.08 Selection of Option

(a) The Employer will advise the employee of his or her years of continuous employment no later than three (3) months following the official date of signing of the collective agreement.

(b) The employee shall advise the Employer of the term of payment option selected within six (6) months from the official date of signing of the collective agreement.

(c) The employee who opts for the option described in 50.07(c) must specify the number of complete weeks to be paid out pursuant to 50.07(a) and the remainder to be paid out pursuant to 50.07(b).

(d) An employee who does not make a selection under 50.08(b) will be deemed to have chosen option 50.07(b).

#### 50.09 Appointment from a Different Bargaining Unit

This clause applies in a situation where an employee who resigns from an organization listed in Schedule I, IV or V of the Financial Administration Act in order to take a position with the Employer, and is appointed to a position in the Regional Office Interviewer bargaining unit where, at the date of appointment, provisions similar to those in 50.01(b) and (d) are still in force.

(a) Subject to 50.02 above, on the date an ongoing employee becomes subject to this Agreement after the 30<sup>th</sup> day following the date of this award, he or she shall be entitled to severance payment equal to one (1) week's pay for each complete year of continuous employment and, in the case of a partial year of continuous employment, one (1) week's pay multiplied by the number of days of continuous employment divided by three hundred and sixty-five (365), to a maximum of thirty (30) weeks, based on the employee's rate of pay of his or her substantive position on the day preceding the appointment.

(b) Subject to 50.02 above, on the date a term employee becomes subject to this Agreement after the 30<sup>th</sup> day following the date of this award, he or she shall be entitled to a severance payment equal to one (1) week's pay for each complete year of continuous employment, to a maximum of thirty (30) weeks, based on the employee's rate of pay of his or her substantive position on the day preceding the appointment.

(c) An employee entitled to a severance payment under sub-paragraph (a) or (b) shall have the same choice of options outlined in 50.08; however the selection of which option must be made within three (3) months of being appointed to the bargaining unit.

(d) An employee who does not make a selection under 50.09(c) will be deemed to have chosen option 50.07(b).

## **ANNEX "A" – HOURLY RATES OF PAY**

### **HOURLY RATES OF PAY**

- A - Effective December 1, 2011 (1.75% increase)
- B - Effective December 1, 2012 (1.5% increase)
- X - Effective December 1, 2013 (retention adjustment)
- C - Effective December 1, 2013 (2.0% increase)

#### **Interviewer**

From: \$	14.72	15.48	16.13	16.81	17.48	18.18
To: A	14.98	15.75	16.41	17.10	17.79	18.50
B	15.20	15.99	16.66	17.36	18.06	18.78
X	15.99	16.87	17.75	18.63	19.53	
C	16.31	17.21	18.11	19.00	19.92	

#### **Senior Interviewer**

From: \$	18.04	18.90	19.68	20.46	21.30	22.13
A	18.36	19.23	20.02	20.82	21.67	22.52
B	18.64	19.52	20.32	21.13	22.00	22.86
X	19.52	20.58	21.65	22.71	23.77	
C	19.91	20.99	22.08	23.16	24.25	

## **ANNEX "A" – PAY NOTES**

### **Retention Adjustment**

- (a) Effective December 1, 2013, employees shall be paid on the 'X' scale at the rate nearest to, but not less than their rates of pay as of close of business on November 30, 2013.



(b) Movement to the 'X' scale does not affect the pay increment period of employees.

**Pay Increments**

No amendments.

**Promotions**

No amendments to (a).

Sub-paragraph (b) is amended as follows:

Notwithstanding the above, an employee at the fourth level or at the maximum rate of pay of the Interviewer level who is promoted to the Senior Interviewer level will move to the second step in the Senior Interviewer level rates of pay.

**ANNEX "G" – MEMORANDUM OF UNDERSTANDING, OPERATIONAL REQUIREMENTS**

The memorandum as it currently reads will be replaced with following:

The Employer agrees that when an employee is denied leave because of operational requirements, it will disclose to the employee what those operational requirements are.

**Seized**

We remain seized of the implementation of this award until the parties enter into a formal collective agreement.

Dated at TORONTO this 30th day of March 2015.

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Christine Schmidt, Chairperson  
For the Arbitration Board